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(31,818)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 331

COMPANIA GENERAL DE TABACOS DE FILIPINAS, PETITIONER,

vs.

COLLECTOR OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 15, 1926

G. R. No. 23400.

The United States of America Supreme Court of the Philippine Islands

Court of First Instance of Manila, Case No. 24747. Concerning sum of money.

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, *Plaintiff and Appellant,*

versus

COLLECTOR OF INTERNAL REVENUE, *Defendant and Appellee.*

(APPELLATE JURISDICTION)

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On September 29, 1923, the plaintiff through its attorneys filed the following:

[CAPTION AND TITLE OMITTED]

AMENDED COMPLAINT

Comes now the Plaintiff, by its undersigned attorneys, and by leave of Court first had and obtained, submits herewith its Amended Complaint and alleges:

FIRST CAUSE OF ACTION

I

That it is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila.

II

That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue for the Philippine Islands.

III

That during the year 1922, by contracts made in London, England, plaintiff did insure certain of its properties, situate in the Philippine Islands, with the Guardian Assurance Company, of London, England, a foreign insurance corporation, and did pay to said company, in London, England, premiums on said insurance in the sum of FOUR THOUSAND EIGHT HUNDRED THIRTY-TWO and 35/100 PESOS (₱4,832.35), Philippine Currency.

IV

That said Guardian Assurance Company, of London, England, is licensed to do business in the Philippine Islands and is represented in said Islands by Smith, Bell & Company, Ltd., Kerr & Co., Wise & Company, and Macleod & Company, Inc., all of Manila, as plaintiff is reliably informed and verily believes.

V

That all of the insurance effected by plaintiff, as set forth in Paragraph III hereof, was obtained by plaintiff itself from said Guardian Assurance Company, of London, England, without the intervention or assistance of either Smith, Bell & Company, Ltd., Kerr & Co., Wise & Company, or Macleod & Company, Inc., of Manila, as the representative and agent of said foreign insurance company, and without the use of the services of any other agent, company, corporation, or other representative of the aforesaid foreign insurance company, residing or doing business in the Philippine Islands.

VI

That the defendant Collector of Internal Revenue acting, and pretending to act, under the provisions of Section 192 of Act No. 2427, as amended by Act No. 2430, unlawfully and illegally did levy and assess against, and collect from, plaintiff a tax of one (1%) per centum upon the amount of the premiums paid by plaintiff upon its foreign insurance, as aforesaid, in the sum of FORTY-EIGHT AND 32/100 PESOS (₱48.32).

VII

That on the 28th day of June, 1923, plaintiff, in order to avoid the infliction upon it of severe fines and penalties and the distraint of its goods and property by defendant, did pay to the defendant, under instant protest in writing, the said sum of FORTY-EIGHT AND 32/100 PESOS (₱48.32).

VIII

That the defendant Collector of Internal Revenue overruled and denied plaintiff's aforesaid protest and has refused and failed to return to plaintiff, upon demand, the said sum of FORTY-EIGHT AND 32/100 PESOS (₱48.32), or any part hereof.

PLAINTIFF alleges:

SECOND CAUSE OF ACTION

I

That it is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila.

II

That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue for the Philippine Islands.

III

That during the year 1922, plaintiff from time to time shipped and exported from the Philippine Islands to countries without the Philippine Islands various and sundry lots of merchandise belonging to it.

IV

That in order to obtain protection against the marine risks to which the said merchandise was exposed in the course of transportation from the Philippine Islands to its destination, in countries without the Philippine Islands, plaintiff from time to time in the course of the said year 1922, did, by contracts made and entered into in Paris, France, insure its said merchandise against the said marine risks under policies issued to it in Paris, France, by Le Comité des Assurances Maritimes de Paris, of Paris, France, a foreign marine insurance corporation not registered or licensed to do business in the Philippine Islands, and having no agent or other representative in said Islands, and did pay to said foreign insurance company, in Paris, France, in French Currency, premiums on its aforesaid insurance in a sum equivalent to ONE HUNDRED THOUSAND FIFTY AND 44/100 PESOS (₱100,050.44), Philippine Currency.

V

That all of the insurance effected by plaintiff, as set forth above herein, was obtained by plaintiff itself, without the use of the services of any agent, company, corporation or other representative of the aforesaid foreign insurance company, residing or doing business in the Philippine Islands.

VI

That the defendant Collector of Internal Revenue acting and pretending to act under the provisions of section 192 of Act No. 2427, as amended by Act No. 2430, unlawfully and illegally did levy and assess against, and collect from, plaintiff a tax of one (1%) per centum upon the amount of the premiums paid by plaintiff upon its foreign marine insurance, as aforesaid, in the sum of ONE THOUSAND AND 50/100 PESOS (₱1,000.50).

VII

That on the 28th day of June, 1923, plaintiff, in order to avoid the infliction upon it of severe fines and penalties and the distraint of its goods and property by defendant, did pay to the defendant, under instant protest in writing, the said sum of ONE THOUSAND AND 50/100 PESOS (₱1,000.50).

VIII

That the Collector of Internal Revenue overruled and denied plaintiff's aforesaid protest and has refused and failed to return to plaintiff, upon demand, the said sum of ONE THOUSAND AND 50/100 PESOS (₱1,000.50), or any part thereof.

WHEREOF, plaintiff prays judgment in its favor and against defendant for the sum of FORTY-EIGHT AND 32/100 PESOS (₱48.32), as set forth in the first cause of action herein, and for the additional sum of ONE THOUSAND AND 50/100 PESOS (₱1,000.50), as set forth in plaintiff's second cause of action herein, in the sum total of ONE THOUSAND FORTY-EIGHT AND 82/100 PESOS (₱1,048.82), and costs.

Manila, P. I., September 28, 1923.

FISHER, DEWITT, PERKINS & BRADY,
By (Sgd.) JOHN R. MCFIE, JR.,
Attorneys for Plaintiff.
601 Pacific Building, Manila, P. I.

On September 15, 1923, the Attorney-General, on behalf of the defendant, filed his answer to the original complaint which also represents his answer to the foregoing amended complaint, as follows:

[CAPTION AND TITLE OMITTED]

ANSWER

Now comes the defendant in the above entitled case and through his undersigned attorney to this Court respectfully states:

I

That he admits the allegations set forth in plaintiff's first and second causes of action, except the allegation contained in the third paragraph of the first cause of action that the Guardian Assurance Company of London, England, has no agent in the Philippine Islands.

II

That the taxes mentioned in plaintiff's complaint and sought to be recovered by it in this case were lawfully and legally levied, assessed, and collected under the provisions of section 192 of Act No. 2427, as amended by Act No. 2430.

Wherefore, the defendant prays the Court to render judgment, that plaintiff take nothing by its complaint, with costs of this action against plaintiff.

Manila, P. I., September 14, 1923.

ANT. VILLA-REAL,
Attorney-General.

On August 20, 1924, the case came on for hearing in Branch III of the Court of First Instance of Manila, and the same was submitted by the parties on the following agreed statement of facts:

[CAPTION AND TITLE OMITTED]

AGREED STATEMENT OF FACTS

Come now the Compañía General de Tabacos de Filipinas, plaintiff, and the Collector of Internal Revenue, defendant, by their undersigned attorneys, and stipulate and agree upon the following statement of facts in this case:

I

That the plaintiff is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila.

II

That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue for the Philippine Islands.

III

That, during the year 1922, plaintiff purchased and deposited in its warehouses in the Philippine Islands, certain goods, wares and merchandise and, from time to time, by cable, notified its head office in Barcelona, Spain, of the value thereof.

IV

That plaintiff's head office in Barcelona thereupon insured said goods, wares and merchandise, for and on behalf of plaintiff, against fire, under open and running policies of insurance carried by it with the Guardian Assurance Co., of London, England, and did pay to said Guardian Assurance Co. in London, premiums on said fire insurance, during said year, of the value of ₱4,832.25.

V

That plaintiff's head office in Barcelona, in turn, charged to plaintiff's account the expense of said premiums paid by it as aforesaid, in the sum of ₱4,832.25, for said year 1922.

VI

That, subsequent to the purchase by plaintiff of the goods, wares and merchandise referred to hereinabove, plaintiff did, from time to time during the year 1922, ship said goods abroad, for sale, and did, by cable, at the time of making said shipments, notify its head office in Barcelona, Spain, of the value of said shipments.

VII

That plaintiff's head office in Barcelona thereupon insured said shipments of goods, for and on behalf of plaintiff, against marine risks, under open and running policies of insurance carried by it with Le Comité des Assurances Maritimes de Paris, of Paris, France, and did pay to said Comité des Assurances Maritimes, in Paris, France, premiums on said marine insurance, during the year 1922, of the value of ₱100,050.44.

VIII

That plaintiff's head office in Barcelona, in turn, charged to plaintiff's account the expense of said premiums paid by it, as aforesaid, in the sum of ₱100,050.44, for the year 1922.

IX

That both the Guardian Assurance Co. of London and Le Comité des Assurances de Paris are foreign corporations, the former being licensed to do business in the Philippine Islands and having an agent or agents in said Islands; that the latter company (Le Comité des Assurances de Paris) is not licensed to do business in the Philippine Islands and has no agent therein.

X

That all insurance effected as hereinabove recited was obtained in the manner hereinbefore recited and without the use of the services or intervention of any agent, company, corporation or other representative of the aforesaid two foreign insurance companies, residing or doing business in the Philippine Islands.

XI

That on or about the 25th day of June, 1923, the defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, and acting under the pretended authority of Section 192 of Act 2427, as amended by Act No. 2430, levied, assessed and collected from plaintiff a tax of 1% upon the premiums paid by plaintiff as aforesaid, as follows:

Guardian Assurance Co.	Premium	₱ 4,832.25—	Tax	₱ 48.32
Le Comité des Assurances de Paris...	"	100,050.44—	"	1,000.50
a total tax in the sum of				₱1,048.82

XII

That on the 28th day of June, 1923, plaintiff paid to defendant said tax, in the sum of ₱1,048.82, under instant protest in writing.

XIII

That plaintiff's protest was overruled and denied by defendant on the 27th day of July, 1923; whereupon, and on the 16th day of August, 1923, plaintiff filed its action for the recovery of said taxes.

XIV

It is further stipulated that both parties to this action waive the taking of testimony in open court and agree that this cause be submitted for decision upon the foregoing facts.

Manila, P. I., August 20, 1924.

FISHER, DEWITT, PERKINS & BRADY,
By (Sgd.) JOHN R. MCFIE, JR.,
Attorneys for Plaintiff.

(Sgd.) ANT. VILLA-REAL,
Attorney for Defendant.

On August 25, 1924, both parties, plaintiff and defendant, filed the following stipulation with respect to additional fact, to-wit:

[CAPTION AND TITLE OMITTED]

STIPULATION

Come now the Compañía General de Tabacos de Filipinas, plaintiff, and the Collector of Internal Revenue, defendant, by their undersigned attorneys, and stipulate and agree, in addition to the facts heretofore agreed upon in this cause, dated August 20th, 1924, that the following fact may be accepted by the Court as true:

It is agreed that, had any losses occurred to plaintiff, during the year 1922, under the insurance policies carried by plaintiff's head office in Barcelona, Spain, with the Guardian Assurance Co., of London, England, and with Le Comité des Assurances Maritimes de Paris, of Paris, France, for and on behalf of plaintiff, such losses would have been paid to plaintiff's head office, in London and/or Paris, as the case might be, for plaintiff's account.

Manila, P. I., August 25, 1924.

FISHER, DEWITT, PERKINS & BRADY,
By (Sgd.) JOHN R. MCFIE, JR.,
Attorneys for Plaintiff.

ANT. VILLA-REAL,
Attorney-General.

By (Sgd.) S. ABAD SANTOS,
Assistant Attorney.
Attorney for Defendant.

On October 15, 1924, the Court entered judgment and decision in the case as follows:

[CAPTION AND TITLE OMITTED]

DECISION

Plaintiff brought this suit to recover of defendant certain sums paid under protest as internal-revenue taxes on premiums paid by plaintiff during the year 1922, through its head office

in Barcelona, Spain, to the Guardian Assurance Company, of London, England, and Le Comité des Assurances de Paris, of Paris, France, two foreign insurance companies.

The parties, through their attorneys, filed the following

"STIPULATION

"It is hereby stipulated and agreed, by and between the plaintiff and defendant herein, by their undersigned attorneys, that the above entitled cause be submitted to the Court for decision upon the agreed statement of facts attached hereto.

"It is further stipulated that the parties waive the taking of testimony in open court.

"It is further stipulated that the Court may find the facts as contained in said agreed statement of facts and may enter judgment in accordance therewith; the plaintiff to have ten days from date hereof within which to serve and file its memorandum, and defendant a like period thereafter within which to reply thereto."

And also filed the following

"STIPULATION

"Come now the Compañía General de Tabacos de Filipinas, plaintiff, and the Collector of Internal Revenue, defendant, by their undersigned attorneys, and stipulate and agree, in addition to the facts heretofore agreed upon in this case, dated August 20th, 1924, that the following fact may be accepted by the court as true:

"It is agreed that, had any losses occurred to plaintiff, during the year 1922, under the insurance policies carried by plaintiff's head office in Barcelona, Spain, with the Guardian Assurance Co., of London, England, and with Le Comité des Assurances Maritimes de Paris, of Paris, France, for and on behalf of plaintiff, such losses would have been paid to plaintiff's head office, in London and/or Paris, as the case might be, for plaintiff's account."

The following is the

"AGREED STATEMENT OF FACTS

"Come now the Compañía General de Tabacos de Filipinas, plaintiff, and the Collector of Internal Revenue, defendant, by their undersigned attorneys, and stipulate and agree upon the following statement of facts in this case:

I

"That the plaintiff is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila.

II

"That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue for the Philippine Islands.

III

"That, during the year 1922, plaintiff purchased and deposited in its warehouses in the Philippine Islands, certain goods, wares and merchandise and, from time to time, by cable, notified its head office in Barcelona, Spain, of the value thereof.

IV

"That plaintiff's head office in Barcelona thereupon insured said goods, wares and merchandise, for and on behalf of plaintiff, against fire, under open and running policies of insurance carried by it with the Guardian Assurance Co., of London, England, and did pay to said Guardian Assurance Co. in London, premiums on said fire insurance, during said year, of the value of ₱4,832.25.

V

"That plaintiff's head office in Barcelona, in turn, charged to plaintiff's account the expense of said premiums paid by it as aforesaid, in the sum of ₱4,832.25, for said year 1922.

VI

"That, subsequent to the purchase by plaintiff of the goods, wares and merchandise referred to hereinabove, plaintiff did, from time to time during the year 1922, ship said goods abroad, for sale, and did, by cable, at the time of making said shipments, notify its head office in Barcelona, Spain, of the value of said shipments.

VII

"That plaintiff's head office in Barcelona thereupon insured said shipments of goods, for and on behalf of plaintiff, against marine risks, under open and running policies of insurance carried by it with Le Comité des Assurances Maritimes de Paris, of Paris, France, and did pay to said Comité des Assurances Maritimes, in Paris, France, premiums on said marine insurance, during the year 1922, of the value of ₱100,050.44.

VIII

"That plaintiff's head office in Barcelona, in turn, charged to plaintiff's account the expense of said premiums paid by it, as aforesaid, in the sum of ₱100,050.44, for the year 1922.

IX

"That both the Guardian Assurance Co. of London and Le Comité des Assurances de Paris, are foreign corporations, the former being licensed to do business in the Philippine Islands and having an agent or agents in said Islands; that the latter company (Le Comité des Assurances de Paris) is not licensed to do business in the Philippine Islands and has no agent therein.

X

"That all insurance effected as hereinabove recited was obtained in the manner hereinbefore recited and without the use of the services or intervention of any agent, company, corporation or other representative of the aforesaid two foreign insurance companies, residing or doing business in the Philippine Islands.

XI

"That on or about the 25th day of June, 1923, the defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, and acting under the pretended authority of Sec. 192 of Act 2427, as amended by Act No. 2430, levied, assessed and collected from plaintiff a tax of 1% upon the premiums paid by plaintiff as aforesaid, as follows:

Guardian Assurance Co. Premium.....	₱ 4,832.25—	Tax	₱ 48.32
Le Comité des Assurances de Paris Premium....	100,050.44—	"	1,000.50
a total tax in the sum of.....			₱1,048.82

XII

"That on the 28th day of June, 1923, plaintiff paid to defendant said tax, in the sum of ₱1,048.82, under instant protest in writing.

XIII

"That plaintiff's protest was overruled and denied by defendant on the 27th day of July, 1923; whereupon, and on the 16th day of August, 1923, plaintiff filed its action for the recovery of said taxes.

XIV

"It is further stipulated that both parties to this action waive the taking of testimony in open court and agree that this cause be submitted for decision upon the foregoing facts."

Defendant relies upon the provisions of section 192 of Act No. 2427 (Insurance Act), as amended by Act No. 2430, as authority for collecting the tax in question. Said section provides:

> "Sec. 192. It shall be unlawful for any person, company, or corporation in the Philippine Islands either to procure, receive, or forward applications for insurance in or to issue or to deliver or accept policies of or for any company or companies not having been legally authorized to transact business in the Philippine Islands, as provided in this chapter; and any such person, company, or corporation violating the provisions of this section shall be deemed guilty of a penal offense, and, upon conviction thereof, shall for each such offense, be punished by a fine of two hundred pesos, or imprisonment for two months, or both in the discretion of the court: *Provided*, That insurance in companies not authorized to transact business in the Philippine Islands may be placed upon terms and conditions as follows:
>
> "The Insurance Commissioner may issue a certificate of authority to any regularly authorized fire or marine insurance agent of the Philippine Islands, subject to revocation at any time, permitting the person named therein to procure policies of insurance on risks located in the Philippine Islands for companies not authorized to transact business in the Philippine Islands.
>
> "Before the agent named in such certificate of authority shall procure any insurance in such company there shall be executed and filed in each case with the Insurance Commissioner by the agent and by the party desiring the insurance affidavits setting forth that the party desiring insurance is after diligent effort unable to procure, in any of the companies authorized to do business in the Philippine Islands, the amount of insurance necessary.
>
> "Every such agent shall keep a separate account of the business done under the authority of this section, open at all times to the inspection of any authorized Government officer, showing the exact amount and char-

acter of such insurance placed for any person, firm, or corporation, the gross premiums charged thereon, the companies with which the same is placed, the dates of the policies, the terms thereof, and the location of the insured property.

"Such agent shall likewise make a yearly report to the Collector of Internal Revenue at the time and in the manner prescribed in section eighty-one of Act Numbered Twenty-three hundred and thirty-nine, showing the entire amount of all premiums received by the company he represents under the authority of this section. And such agent shall pay to the Collector of Internal Revenue a tax equal to twice the tax imposed by section seventy-nine of Act Numbered Twenty-three hundred and thirty-nine, which tax shall be paid at the same time and be subject to the same penalty for delinquency as the tax imposed by said Act Numbered Twenty-three hundred and thirty-nine: *Provided, however*, That the provisions of this section shall not apply to reinsurance: *And provided further*, that the prohibitions of this section shall not affect the right of an owner of property to apply for and obtain for himself policies in foreign companies in cases where said owner does not make use of the services of any agent, company, or corporation residing or doing business in the Philippine Islands. In all cases where owners of property obtain insurance directly with foreign companies, it shall be the duty of said owners to report to the Insurance Commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so."

The part of said section with which we are more particularly concerned in this case is the proviso at the end thereof, as follows:

"*And provided further*, that the prohibitions of this section shall not affect the right of an owner of property to apply for and obtain for himself policies in foreign

companies in cases where said owner does not make use of the services of any agent, company, or corporation residing or doing business in the Philippine Islands. In all cases where owners of property obtain insurance directly with foreign companies, it shall be the duty of said owners to report to the Insurance Commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so."

Plaintiff contends that the said provision of the Insurance Law is illegal and unconstitutional in that it violates the following clauses of section 3 of the Jones Law, Act of Congress of August 29, 1916:

> "Sec. 3. That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. Private property shall not be taken for public use without just compensation."
>
> * * * * * * * * * *
>
> "That the rule of taxation in said Islands shall be uniform."

In other words, plaintiff's contentions are substantially as follows:

First. That said provision of section 192 of the Insurance Law violates the constitutional provision that the rule of taxation in these Islands shall be uniform.

Second. That said provision infringes the constitutional guaranty that the state cannot deprive its citizens of life, liberty or property without due process of law, or deny to any person the equal protection of the laws.

In support of the first point, plaintiff relies upon the case of *Re* Thomas Page, 60 Kan. 842, 47 L. R. A. 68. The Kansas legislature passed an act entitled "An Act Providing for the Taxation of Contracts of Insurance Made with Insurance Com-

panies not Authorized to Do Business in Kansas, and Providing for the Enforcement Thereof." The act provided for a tax of ten per cent of the amount of the premiums on contracts of insurance effected in companies not authorized to do business in Kansas. Thomas Page effected insurance on certain Kansas property in a company in Indianapolis, Indiana. He refused to comply with that act and was arrested and prosecuted for a violation thereof. He sought his liberty through *habeas corpus* proceedings in the State Supreme Court.

The Constitution of Kansas requires the legislature to "provide for a uniform and equal rate of assessment and taxation." The Supreme Court of Kansas, in the course of its decision in the Page case, held that insurance contracts indemnify the insured against loss and have some of the characteristics of bonds, mortgages, and other like securities which are made the subjects of taxation; that they have property value, susceptible of measurement, and that it was competent for the legislature to treat them as property, as it did, and to make them subject to taxation; that, in the absence of constitutional restrictions, the sovereign power of the state may be exercised almost without limitation in determining what should be subject to taxation, and the manner of levying and collecting taxes; that arbitrary and unequal exactions cannot be levied upon persons or property; but that, unless a tax for public purposes is imposed on false and unjust principles, or violates an express provision of the Constitution, the will of the legislature is conclusive.

The Supreme Court of Kansas held in said case that the act in question did not provide for any assessment or valuation, and seemed to regard this as a violation of the State Constitution; but the principal objection to the act was expressed by the Supreme Court as follows: "The lack of uniformity is manifest in another way: One taxpayer has a policy written in the state by a company with authority, upon which no tax is imposed, while his neighbor has one written by an unlicensed company at Indianapolis, or other place outside of the state, which is subject to taxation. Taxes are uniform and equal when imposed upon all property of the same character within the taxing district, and yet here the insured pays a 10 per cent tax upon a

policy written outside of the state, while his neighbor pays nothing upon a policy of equal value, and affording the same protection, because it is written within the state. Contracts of insurance written outside of the state cannot be regarded as illegal. Aside from the consideration that they may not be Kansas contracts, and are therefore beyond the reach of the legislature, the act itself contemplates that such contracts may and will be made, and when made are to be treated as property within the state, and become the subject of taxation here. This is an invidious discrimination, purposely made, and is a distinct departure from the constitutional rule of uniformity."

Under our laws there is no such "invidious discrimination." A uniform internal-revenue tax is imposed upon all persons, companies and corporations doing insurance business in the Philippine Islands (Act No. 2339, sec. 79; Administrative Code, sec. 1505). Any regularly authorized fire and marine insurance agent may be duly authorized by the Insurance Commissioner to procure policies of insurance on risks located in the Philippine Islands for companies not authorized to transact business in the Philippine Islands, and such agent must pay a tax of two per cent of the premiums on such insurance. When a foreign company is not authorized to transact business here, and it has no agent here who is duly authorized to accept risks for it, the owner of property may effect fire or marine insurance directly with such foreign company, or through any agency outside of the Philippine Islands, in which event the owner must pay a tax of one per cent of the amount of the premiums paid on such insurance (Act No. 2427, sec. 192, as amended, *supra*). Such owners are taxable persons because they are under an obligation to contribute from their means to the necessities of the state.

The language of the Supreme Court of Kansas in the Page case, about the Constitution contemplating that there will be an assessment or valuation of the property, has no application in this case under the provision of our fundamental law as to a uniform rule of taxation. The Jones Act, section 3, merely provides "That the rule of taxation in said Islands shall be uniform." Furthermore, the objection made in the Page case that there was no provision for assessment has no basis in this case,

because our constitutional provision does not require assessment as a basis for taxation. Internal-revenue taxes are not based upon assessment as in the case of property taxes. The legislature prescribes the method of levying and collecting taxes. As held by the Supreme Court of Kansas in the Page case, "in the absence of constitutional restrictions, the sovereign power of the state may be exercised almost without limitation in determining what should be subject to taxation, and the manner of levying and collecting taxes." Insurance premiums are usually based upon a percentage of the value of the property, and a tax of one per cent of the amount of the premium would seem to be a more equitable basis for the tax than an assessment of the value of the policies.

In their introduction to the second point made by them, plaintiff's attorneys say:

> "* * * Concretely stated, our chief contention in this case is that section 192 of Act 2427, as amended by Act No. 2430, is invalid, in so far as it attempts to prohibit the making and obtaining of marine and fire insurance outside of the Philippine Islands, with foreign insurance companies, on property then in these Islands, because it is a deprivation of the liberty of citizens of these Islands without due process of law."

Plaintiff, on this point, advances the proposition that the provision in question "operates as a prohibition against the rights of citizens of the Philippine Islands to make contracts of insurance" or "it penalizes the rights of citizens of the Philippine Islands for making contracts of insurance with foreign insurance companies by requiring such citizens to pay a tax equal to 1% of the value of the premiums paid for such foreign insurance."

Plaintiff's attorneys, in support of said proposition, cite and quote as the leading case Allegeyer et al. *vs.* Louisiana, 165 U. S. 589, 41 Law Ed. 832. The state of Louisiana attempted to enforce the collection of a fine of $1,000.00 from Allegeyer and others for a supposed violation of a statute entitled, "An Act to Prevent Persons, Corporations or Firms from Dealing with Marine Insurance Companies That Have not Complied

with Law." The Louisiana legislature, by said statute, made it a penal offense for any person, firm, or corporation to fill up, sign or issue in that state any certificate of insurance under an open marine policy or in any manner to effect for himself or another insurance on property then in that state in any marine insurance company which has not complied in all respects with the laws of Louisiana.

In the Allegeyer case it appears that the Supreme Court of Louisiana stated the question at issue as follows:

> "The question presented is the simple proposition whether under the Act a party while in the state can insure property in Louisiana in a foreign insurance company, which has not complied with the laws of the state, under an open policy, the special contract or insurance and the open policy being contracts made and entered into beyond the limits of the state."

The Supreme Court of Louisiana sustained the validity of the statute. The Supreme Court of the United States, after an extended review of the cases upon the right and liberty to contract, under the 14th amendment, reversed the decision of the Supreme Court of Louisiana, and, among other things, said: "Such a statute as this in question is not due process of law, because it prohibits an act which under the Federal Constitution the defendants had a right to perform." And also said: "Any act of the state legislature which should prevent the entering into such a contract, or the mailing within the state of Louisiana of such a notification as is mentioned in this case, is an improper and illegal interference with the conduct of the citizen, although residing in Louisiana, in his right to contract and carry out the terms of a contract validly entered into outside and beyond the jurisdiction of the state."

For such reasons, the Louisiana statute, prohibiting insurance on property in that state in any marine insurance company which had not complied in all respects with the laws of the state, was declared by the Supreme Court of the United States to be a violation of the 14th amendment to the Federal Constitution.

If we had such a law under consideration here, the Allegeyer case might be applicable. Our law imposes a tax on all insurance premiums. Section 192 of our Insurance Law, above quoted, does not prohibit insurance in unauthorized foreign companies, but expressly recognizes the right of any person to effect such insurance, and in terms provides that "the prohibitions of this section shall not affect the right of an owner of property to apply for and obtain for himself policies in foreign companies in cases where said owner does not make use of the services of any agent, company, or corporation residing or doing business in the Philippine Islands." Therefore, the doctrine of the Allegeyer case, and of the cases which have followed it, is inapplicable in this case.

The only case cited by plaintiff which is similar to the case at bar is that of St. Louis Cotton Compress Co. *vs.* State of Arkansas, 260 U. S. 346, 67 Law Ed. 297, but that case may not be accepted as controlling in this case. The State of Arkansas attempted to collect a tax from the St. Louis Cotton Compress Company, a Missouri corporation authorized and licensed to do business in the State of Arkansas, under a statute purporting to impose a tax of 5% on the gross premiums paid to foreign insurance companies not licensed to do business in Arkansas. The answer alleged, among other allegations, that the policies were contracted for, delivered and paid for in St. Louis, Missouri, the domicile of the defendant, because the rates were less than those charged by companies authorized to do business in Arkansas. The plaintiff demurred. The trial court overruled plaintiff's demurrer to the answer. The Supreme Court of Arkansas reversed the lower court, sustained the demurrer, and held that the statute denied to the defendant no rights guaranteed to it by the 14th amendment to the Federal Constitution. On writ of error to the Supreme Court of the United States that decision was reversed. That High Tribunal recited the fact that the tax on premiums paid to foreign insurance companies in Arkansas was 5%, which is 3% more than is charged for insuring in authorized companies, and held that each is a prohibition to the extent of the payment required. Aside from this ruling, it is apparent that there was an "invidious discrimination" in that state

against obtaining insurance in foreign companies. In fact, the Supreme Court said: "The Arkansas tax manifests no less plainly than the Louisiana fine a purpose to discourage insuring in companies that do not pay tribute to the state." There is no such "invidious discrimination" in this case, and there is no attempt to regulate or interfere with the activities of foreign corporations outside of the Philippine Islands. Moreover, as the United States Supreme Court says, in the Arkansas case, no act was done in the State of Arkansas. The domicile of the taxpayer was St. Louis, Missouri, and the insurance contract was made there without any act in the State of Arkansas. In the present case the taxpayer cabled from Manila to its head office in Barcelona, Spain, the description and value of the property in the Philippines for insurance in the two foreign companies. The cables from Manila to Barcelona were absolutely necessary for the insurance of plaintiff's property here. Without them or some other form of communication the insurance could not have been effected in Barcelona. Had such a fact been present in the Arkansas case, it might have been distinguished from the Allegeyer case. In the case at bar the cabling to Barcelona was prior to the cosummation of the insurance contracts and constituted a step in making the contracts, while in the Allegeyer case the letter of notification was mailed in Louisiana after the insurance contract had been made. The United States Supreme Court notes this fact in the Allegeyer case as follows: "In the case before us the contract was made beyond the territory of the State of Louisiana, and the only thing that the facts show was done within that state was the mailing of a letter of notification, as above mentioned, *which was done after the principal contract had been made.*"

We believe that the case before this court is distinguishable from the Arkansas case, as well as the Kansas and Louisiana cases.

It is clear from the provisions of said section 192 of the Insurance Act that the Government is not attempting to prohibit owners from insuring their property against fire and marine risks in foreign insurance companies. Such companies may do business in the Philippine Islands on the same basis of taxation as

domestic insurance companies. Any regularly authorized fire or marine insurance agent may be authorized to procure policies of insurance on risks located in the Philippine Islands for companies not authorized to transact business in the Philippine Islands. Furthermore, by the proviso here in question, an owner of property is at liberty to apply for and obtain for himself insurance policies in foreign companies in cases where he does not make use of the services of any agent, company, or corporation residing or doing business in the Philippine Islands. In this class of cases it is made the duty of the owner to report to the Insurance Commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and to pay the tax of one per cent on premiums paid, in the manner required by law of insurance companies. In other words, as the Government has no authority or jurisdiction over foreign insurance companies who are not doing business in the Philippine Islands, it exercises its authority and jurisdiction over the insured, who is in the Philippine Islands, and whose property was insured while it was located in the Philippine Islands, by imposing upon the owner in the Philippine Islands the same tax which would have to be paid by the foreign insurance company, if it were authorized to do and doing the business in the Philippine Islands.

The court is of the opinion that section 192 of Act No. 2427, as amended by Act No. 2430, does not deprive any person of life, liberty or property without due process of law, and does not deny to any person in these Islands the equal protection of the laws, because the rule of taxation is uniform as to each and every classification for taxation and there is no prohibition of the right and liberty to contract for fire and marine insurance.

We agree with the Attorney-General in the following statement of his case:

> "The case at bar is simply this: The Government says to the Compañía General de Tabacos de Filipinas, 'If you insure your property with insurance companies paying taxes to me, you pay no taxes. If you insure it with insurance companies which do not and cannot be made to pay taxes to me because they are beyond my jurisdiction, you pay the taxes that leak from my coffers

on account of your act.' Now, who will deny the right of the State to do this? Who will say that this is deprivation of property without due process of law? 'In order to bring taxation imposed by a state, or under its authority, within the scope of the fourteenth amendment which prohibits the deprivation of property without due process of law the case should be so clearly and palpably an illegal encroachment upon private rights as to leave no doubt that such taxation by its necessary operation is really spoliation under the power to tax.' (Cooley on Taxation, Vol. I, pages 55-56, and cases cited.) Contracts of insurance are subject to taxation. Thus, in the case of *Re* Thomas Page, *supra*, the Supreme Court of Kansas said: 'Such contracts * * * indemnify the insured against loss, and have some of the characteristics of bonds, mortgages, and other like securities which are made the subjects of taxation. They have property value susceptible of measurement, and it was competent, therefore, for the legislature to treat them as property, as it did, and to make them subject to taxation. Atchison; T. and S. F. R. Co. *v.* Howe, 32 Kan. 377, 5 Pac. 397.'

"It is now a well-settled doctrine that in matters of taxation the State is given wide latitude in determining what and how taxes should be levied, this on the theory that without revenues no government can exist. Withal the constitutionality of the law herein involved is being questioned. To reenforce this argument it is not, therefore, amiss to recall, in closing, the great principle of constitutional law that 'every statute is presumed to be constitutional, and the courts ought not to declare an act to be unconstitutional unless it is clearly so. If there is any doubt, the expressed will of the legislature should be sustained.' (U. S. *v.* Grant & Kennedy, 18 Phil. 122, citing Munn *v.* Illinois, 94 U. S. 123.)"

In view of the foregoing considerations, the court is of the opinion that plaintiff is not entitled to recover the taxes paid under protest and sought to be recovered in this case.

Therefore, let judgment be entered dismissing plaintiff's complaint and absolving defendant from the demands of plaintiff, with the costs against plaintiff.

IT IS SO ORDERED.

Manila, P. I., October 15, 1924.

(Sgd.) GEO. R. HARVEY,
Judge.

On October 17, 1924, the plaintiff filed the following exception and motion for new trial:

[CAPTION AND TITLE OMITTED]

Comes now plaintiff, through its undersigned attorneys, and excepts to the decision of this Honorable Court in the above entitled cause, dated October 15th, 1924, and respectfully moves that a new trial be granted upon the following grounds:

1. That the evidence was insufficient to justify the decision;
2. That the decision is contrary to law.

Manila, P. I., October 17, 1924.

FISHER, DEWITT, PERKINS & BRADY,
By (Sgd.) JOHN R. MCFIE, JR.,
Attorneys for Plaintiff.
601 Pacific Building, Manila.

On October 29, 1924, the foregoing motion for new trial was denied by the Court, notice of which was served on the attorneys for the plaintiff on the same day; to the order denying the motion for new trial the plaintiff excepted forthwith and gave notice of intention to prepare and file a bill of exceptions for a review by the Supreme Court.

On November 5, 1924, and within the time limited by law, the plaintiff, by its attorneys, filed with the office of the Clerk of the Court of First Instance of Manila its bill of exceptions praying that the same be approved and transmitted to the Clerk of the Supreme

Court of the Philippine Islands, together with all evidence taken at the trial of this cause, said evidence being incorporated by reference into the said bill of exceptions, in order that the errors complained of might be considered by the Supreme Court of the Philippine Islands.

On November 8, 1924, the Court of First Instance of the City of Manila approved, signed and certified the said bill of exceptions, and the same on November 28, 1924, was transmitted to the office of the Clerk of the Supreme Court of the Philippine Islands, together with the record of the case, for the purpose of the appeal.

On November 29, 1924, the case was duly docketed on appeal, bearing No. 23400 of the General Register of the Supreme Court.

On January 28, 1925, the plaintiff and appellant, by its attorneys, filed its brief in the case, assigning the following errors:

I

The lower court erred in not declaring Sec. 192 of Act No. 2427, as amended by Act No. 2430, void, unconstitutional and violative of Section 3 of the Jones Law—Act of Congress of August 29, 1916,—which provides that the rule of taxation in the Philippine Islands shall be uniform.

II

The lower court erred in not declaring Sec. 192 of Act No. 2427, as amended by Act No. 2430, void, unconstitutional and violative of that certain other provision of Sec. 3 of the Jones Law which provides that no law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty, or property without due process of law.

III

The lower court erred in not holding that the cables sent by plaintiff to its head office in Barcelona (advising Barcelona of the value of goods on deposit or being shipped by plaintiff from these Islands) were collateral and subsequent to the creation of the principal contracts of foreign insurance.

On March 24, 1925, the Attorney-General of the Philippine Islands filed the brief for the defendant and appellee.

On September 26, 1925, the Supreme Court of the Philippine Islands rendered the following decision:

[Caption and Title Omitted]

STATEMENT

Plaintiff alleges "that it is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila". That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue of the Philippine Islands. That during the year 1922, by contracts made in London, England, plaintiff insured certain of its properties in the Philippine Islands with the Guardian Assurance Company, of London, England, a foreign insurance company, and paid it premiums thereon in the sum of ₱4,832.35. That said assurance company is licensed to do business in the Philippine Islands, and is represented by local agents. That such insurance was obtained by the plaintiff itself from the assurance company, of London, without the intervention of any agent residing or doing business in the Philippine Islands. That the defendant, under the provisions of Section 192 of Act No. 2427, as amended by Act No. 2430, has unlawfully and illegally levied and assessed against the plaintiff a tax of one per centum upon the amount of the premiums paid by plaintiff upon its foreign insurance, amounting to ₱48.32. That plaintiff paid this amount under written protest, and that the defendant has overruled and denied its protest, and has

refused to return the money to the plaintiff. Like allegations are made in a second cause of action in which the plaintiff seeks to recover the further sum of ₱1,000.50.

For answer the defendant alleges that the taxes sought to be recovered were lawfully and legally levied, assessed and collected by the said Collector under the provisions of the act in question.

The case was tried and submitted upon the following stipulation of facts!

"AGREED STATEMENT OF FACTS

"Come now the Compañía General de Tabacos de Filipinas, plaintiff, and the Collector of Internal Revenue, defendant, by their undersigned attorneys, and stipulate and agree upon the following statement of facts in this case:

I

That the plaintiff is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila.

II

That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue for the Philippine Islands.

II

That, during the year 1922, plaintiff purchased and deposited in its warehouses in the Philippine Islands, certain goods, wares and merchandise and, from time to time, by cable, notified its head office in Barcelona, Spain, of the value thereof.

IV

That plaintiff's head office in Barcelona thereupon insured said goods, wares and merchandise, for and on behalf of plaintiff, against fire, under open and running

policies of insurance carried by it with the Guardian Assurance Co., of London, England, and did pay to said Guardian Assurance Company in London, premiums on said fire insurance, during said year, of the value of ₱4,832.25.

V

That plaintiff's head office in Barcelona, in turn, charged to plaintiff's account the expense of said premiums paid by it as aforesaid, in the sum of ₱4,832.25, for said year 1922.

VI

That, subsequent to the purchase by plaintiff of the goods, wares and merchandise referred to hereinabove, plaintiff did, from time to time during the year 1922, ship said goods abroad, for sale, and did, by cable, at the time of making said shipments, notify its head office in Barcelona, Spain, of the value of said shipments.

VII

That plaintiff's head office in Barcelona thereupon insured said shipments of goods, for and on behalf of plaintiff, against marine risks, under open and running policies of insurance carried by it with Le Comité des Assurances Maritimes de Paris, of Paris, France, and did pay to said Comité des Assurances Maritimes, in Paris, France, premiums on said marine insurance, during the year 1922, of the value of ₱100,050.44.

VIII

That plaintiff's head office in Barcelona, in turn, charges to plaintiff's account the expense of said premiums paid by it, as aforesaid, in the sum of ₱100,050.44, for the year 1922.

IX

That both the Guardian Assurance Co. of London and Le Comité des Assurances de Paris, are foreign corporations, the former being licensed to do business in the

Philippine Islands and having an agent or agents in said Islands; that the latter company (Le Comité des Assurances de Paris) is not licensed to do business in the Philippine Islands and has no agent therein.

X

That all insurance effected as hereinabove recited was obtained in the manner hereinbefore recited and without the use of the services or intervention of any agent, company, corporation or other representative of the aforesaid two foreign insurance companies, residing or doing business in the Philippine Islands.

XI

That on or about the 25th day of June, 1923, the defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, and acting under the pretended authority of Sec. 192 of Act 2427, as amended by Act No. 2430, levied, assessed and collected from plaintiff a tax of 1% upon the premiums paid by plaintiff as aforesaid, as follows:

Guardian Assurance Co. Premium.....	₱4,832.25—	Tax	₱ 48.32
Le Comité des Assurances de Paris—Premium	100,050.44—	"	1,000.50
a total tax in the sum of.....			₱1,048.82

XII

That on the 28th day of June, 1923, plaintiff paid to defendant said tax, in the sum of ₱1,048.82, under instant protest in writing.

XIII

That plaintiff's protest was overruled and denied by defendant on the 27th day of July, 1923; whereupon, and on the 16th day of August, 1923, plaintiff filed its action for the recovery of said taxes.

XIV

It is further stipulated that both parties to this action waive the taking of testimony in open court and agree that this cause be submitted for decision upon the foregoing facts.

It was further stipulated that:

It is agreed that, had any losses occurred to plaintiff, during the year 1922, under the insurance policies, carried by plaintiff's head office in Barcelona, Spain, with the Guardian Assurance Co., of London, England, and with Le Comité des Assurances Maritimes de Paris, of Paris, France, for and on behalf of plaintiff, such losses would have been paid to plaintiff's head office, in London and/or Paris, as the case might be, for plaintiff's account.

In a well written, exhaustive opinion the lower court dismissed the plaintiff's complaint, with costs, from which the plaintiff appeals, specifying the following assignment of errors:

I

The lower Court erred in not declaring Sec. 192 of Act No. 2427, as amended by Act No. 2430, void, unconstitutional and violative of Section 3 of the Jones Law—Act of Congress of August 29, 1916,—which provided that the rule of taxation in the Philippine Islands should be uniform.

II

The Lower Court erred in not declaring Sec. 192 of Act No. 2427, as amended by Act No. 2430, void, unconstitutional and violative of that certain other provision of Sec. 3 of the Jones Law which provides that no law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty, or property without due process of law.

III

The lower court erred in not holding that the cables sent by plaintiff to its head office in Barcelona (advising Barcelona of the value of goods on deposit or being

shipped by plaintiff from these Islands) were collateral and subsequent to the creation of the principal contracts of foreign insurance.

JOHNS, J.:

As appellant says, "the whole case revolves around the last proviso of Section 192 of Act No. 2427, as amended by Act No. 2430, which reads as follows:

> "* * * *And provided, further*, That the prohibitions of this section shall not affect the right of an owner of property to apply for and obtain for himself policies in foreign companies in cases where said owner does not make use of the services of any agent, company, or corporation residing or doing business in the Philippine Islands. In all cases where owners or property obtain insurance directly with foreign companies, it shall be the duty of said owners to report to the Insurance Commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so."

Relying upon Section 3 of the Jones Law, which provides:

> "That the rule of taxation in said Islands shall be uniform."

appellant vigorously contends that the law is unconstitutional, citing *Re* Thomas Page, 60 Kan. 842, 58 Pac. 478, 47 L. R. A. 58, where it is held:

> "TAXATION—PUBLIC USES—UNIFORMITY.
>
> "An act providing for the taxation of contracts of insurance made with insurance companies not authorized to do business in Kansas, and providing for the enforcement thereof (Laws 1899, c. 249), in part authorizes the imposition of a tax for other than public purposes. It is also a distinct departure from the constitutional rule of uniformity and equality, and is invalid."

This decision apparently sustains appellant's contention. The statute upon which that statement is based is not quoted in the briefs and is not in the Library. The opinion says that in the last session of the Legislature there was passed:

> " 'An act providing for the taxation of contracts of insurance made with insurance companies not authorized to do business in Kansas, and providing for the enforcement thereof.' "

And that:

> "The statute provides that persons insuring property in Kansas with companies not authorized to do business in the state shall report the contracts of insurance to the superintendent of insurance for the purpose of taxation. All such contracts are to be taxed 'in a sum equal to ten per cent, of the amount of premiums paid or contracted to be paid thereon."

Any violation of the provisions of the act would be a misdemeanor.

It appears that Page, the owner of a milling property in Topeka, Kansas, wrote to an insurance company of Indianapolis, Indiana, proposing to take out insurance on his milling property in Topeka. The policy was issued by, and the premium paid to, that Company, which was not authorized to do business in Kansas, and which had no office or agent in that State. The insurance commissioner made a demand upon Page to pay the 10% tax upon the policy, and Page refused payment and challenged the law upon the ground that "the legislature shall provide for a uniform and equal rate of assessment and taxation, and the court held the law unconstitutional. It will be noted that the constitution there in question requires that "the legislature shall provide for a uniform and equal rate of assessment and taxation." The Jones Law provides "that the rule of taxation in said Islands shall be uniform". The word "assessment" is not found in Section 3 of the Jones Law.

Among other things, the opinion in the Page case says:

> "In the absence of constitutional restrictions, the sovereign power of the state may be exercised almost without limitation in determining what should be subject to taxation, and the manner of levying and collecting taxes. Of course, arbitrary and unequal exactions cannot be levied upon persons or property, nor can revenues raised by the exercise of this power be expended for other than public purposes. Unless, however, a tax for public purposes is imposed on false and unjust principles, or violates an express provision of the constitution, the will of the legislature is conclusive.

The opinion also says:

> "To accomplish the uniformity and equality required by the constitution, it would appear that assessment or valuation is indispensable; and yet in this case the legislature, without assessment or valuation of the property, attempts to make an arbitrary exaction. All other property in the state is required to be taxed at its true value in money, but here no account is taken of the solvency of the company or the value of the security or policy."

Under the Kansas constitution, there must be a uniformity and equal rate of both "assessment" and "taxation," and by reason of the fact that there was no provision in its law there in question for the "assessment" of the value of the premiums, upon that point, the law was held unconstitutional. That is not this case, and the omission and distinction is important.

The opinion further says:

> "The lack of uniformity is manifest in another way: One taxpayer has a policy written in the state by a company with authority, upon which no tax is imposed, while his neighbour has one written by an unlicensed company at Indianapolis, or other place outside of the state, which is subject to taxation. Taxes are uniform and equal when imposed upon all property of the same character within the taxing district, and yet here the insured pays a 10 per cent, tax upon a policy written outside of the state,

while his neighbour pays nothing upon a policy of equal value, and affording the same protection, because it is written within the state."

Under the Kansas statute, Page was required to pay 10% of the premiums on his foreign insurance, and here it is a tax of 1% on such premiums, and the law of this country provides that there shall be collected from every person, company or corporation doing any kind of insurance business in the Philippine Islands a tax of one per centum of the total premiums of all premiums collected during each calendar year. In other words, under the law here, the Government receives 1% of all the premiums paid on domestic insurance. It is very apparent from the opinion in the Page case that there is no such a law in the State of Kansas.

The last proviso of Section 192 above quoted must be construed in connection with and as it relates to, Section 1505 of the Administrative Code of 1917, which is as follows:

> "There shall be collected from every person, company, or corporation (except purely cooperative companies or associations) doing insurance business of any sort in the Philippine Islands a tax of one per centum of the total premiums collected during each calendar year, whether paid in money, notes, credits, or any substitute for money, but premiums refunded within six months after payment on account of rejection of risk or returned for other reason to persons insured shall not be included in the taxable receipts; nor shall any tax be paid upon reinsurance by a company that has already paid the tax.
>
> " 'Cooperative companies or associations' are such as are conducted by the members thereof with money collected from among themselves and solely for their own protection and not for profit."

As to the law here in question, we have this situation the Government receives 1% of all premiums collected on domestic insurance which is paid by the insurance companies, and where the insurance is made in a foreign company without the services of an agent by a person here on property here, the provision

above quoted requires that the insured "shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies." That is to say, in one case, the 1% tax is paid by the insurance company, and, in the other, it is paid by the insured. But, as a matter of fact, in both cases, it is paid by the insured. In actual practice, the amount of any tax paid on the premiums collected by the insurance company is added to, and becomes a part of, the premium itself and, in the final analysis, is paid by the insured. If, as a matter of fact, the 1% tax is collected on premiums on domestic insurance and is not collected on premiums paid on foreign insurance, you would then have an "invidious discrimination" against domestic insurance. It is also contended that the act in question is unconstitutional under that portion of Section 3 of the Jones Law, which reads as follows:

> "That no law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws. * * *"

Appellant says:

> "Our contention is that Section 192 of Act 2427, as amended by Act No. 2430, is invalid in so far as it attempts to prohibit the making and obtaining of marine and fire insurance policies *outside* of the Philippine Islands, with foreign insurance companies, on property then in these Islands, because it is a deprivation of the liberty of citizens of these Islands without due process of law.
>
> The leading case on this question is that of Allgeyer et als. *v.* Louisiana, 165 U. S. 578, 41 L. Ed. 832, in which the State of Louisiana attempted to enforce the collection of a fine of $1,000 from the defendant Allgeyer and others for the supposed violation of Louisiana statute No. 66, of 1894, entitled—
>
> > " 'An Act to Prevent Persons, Corporations, or Firms from Dealing with Marine Insurance Companies That Have Not Complied with Law."

This Act, in its material part, reads as follows:

"'BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF LOUISIANA. That any person, firm, or corporation who shall fill up, sign, or issue in this state any certificate of insurance under an open marine policy, or who in any manner whatever does any act in this state to effect for himself, or for another, insurance on property then in this state, in any marine insurance company which has not complied in all respects with the laws of this state, shall be subjected to a fine of $1,000 for each offense. * * *"

"(Allgeyer et al. *v.* State of Louisiana, 165 U. S. 578, 41 Law Ed. 832.)"

It will be noted that there is a very marked distinction between the Louisiana statute upon which that decision is based and which was held unconstitutional and the statute here in question. Under the Louisiana statute, it was made a crime for any person in Louisiana to insure his property in that State in an insurance company "which not complied in all respects with the laws of this state". The Law in question is not intended to prohibit any person in the Philippines from insuring his property here in a foreign insurance company. In fact, it recognizes his right to do so. But it says to all persons, if you insure your property in the Philippines in a foreign insurance company, which is not authorized to do business here, you must pay the Government the 1% tax on the premium which it would have received if the property had been insured through an agent of a company authorized to do business in the Philippine Islands.

Appellant also relies on the case of St. Louis Cotton Compress Co. *v.* State of Arkansas, 260 U. S. 346, 67 L. Ed. 297. That was a suit by the state of Arkansas against a corporation in Missouri authorized to do business in Arkansas and was brought to recover 5% of the gross premiums paid by the defendant for insurance upon its property in Arkansas to companies not authorized to do business in the State. The answer alleged that

the policies were contracted for, and paid for in St. Louis, the domicil of the corporation, because the rates were less than those charged by companies authorized to do business in Arkansas.

It will be noted that the tax there in question was 5%. Here, it is 1% which is the identical amount of tax required to be paid by domestic insurance companies. No reference is made in the opinions of any of the decisions cited as to the amount of tax, which domestic companies are required to pay on premiums, and it is very doubtful whether any such tax is levied by any state on such corporations. No decision founded on a like statute is cited in either brief, and in so far as we are advised, there is no like statute. Hence, this case is one of first impression not only in this Court, but as to the statute in question. The statute was enacted for revenue purposes.

To hold the law unconstitutional would in effect amount to a discrimination in favor of a foreign insurance company which is not authorized to do business in the Philippine Islands and against insurance companies that are authorized to do business here.

After the trial court rendered its decision, the plaintiff filed a motion for a new trial in which it said:

> "We believe the court failed to appreciate the nature of the insurance obtained and carried by plaintiff's *head office* in Barcelona, Spain.

pointing out that, under the agreed statement of facts, plaintiff's goods were insured

> "under *open and running* policies of insurance carried by *it*" (plaintiff's *head office* in Barcelona, Spain.)

In deciding that motion the lower court said:

> "In the first place, plaintiff is a corporation—a juridical person. There is a difference between its juridical personality in Manila and in Barcelona. In either place it acts by and through agents. In the matters here in question the plaintiff in Manila noted by and through its agents in Barcelona.
>
> "In the second place, the agreed statement of facts shows: 'That, during the year 1922, plaintiff purchased and deposited in its warehouses in the Philippine Islands

certain goods, wares and merchandise, and from time to time, by cable notified its head office in Barcelona, Spain, of the value thereof', and 'that plaintiff's head office in Barcelona thereupon insured said goods, wares and merchandise, for and on behalf of plaintiff, against fire, under open and running policies of insurance carried by it with the Guardian Assurance Co., of London, England, and did pay to said Guardian Assurance Co., in London premiums on said fire insurance, during said year, and of the value of ₱4,832.25', and 'That, subsequent to the purchase by plaintiff of the goods, wares and merchandise referred to hereinabove, plaintiff did, from time to time, during the year 1922, ship said goods abroad, for sale, and did, by cable, at the time of making said shipments, notify its head office in Barcelona, Spain, of the value of said shipments' and 'That plaintiff's head office in Barcelona thereupon insured said shipments of goods, for and on behalf of plaintiff, against marine risks, under open and running policies of insurance carried by it with Le Comité des Assurances Maritimes de Paris, of Paris, France, and did pay to said Comité des Assurances Maritimes, in Paris, France, premiums on said marine insurance, during the year 1922, of the value of ₱100,050.44; and it was further agreed that in each case plaintiff's head office charged to plaintiff's account the expense of said premiums paid by it.

"Now, when were the respective cables sent by plaintiff from Manila, *before* or *after* these goods were insured. The so-called open and running policies are not before the court, but the said agreed facts clearly show that, after the goods were purchased and deposited in warehouses in the Philippine Islands, a cable was sent by plaintiff to its Barcelona office giving their value, and that *thereupon* plaintiff's Barcelona office insured said goods against fire; that subsequent thereto plaintiff shipped said goods abroad, and that, *at the time of making said shipments*, plaintiff cabled its head office in Barcelona the value of said shipments, and that *thereupon* plaintiff's

Barcelona office insured said shipments of goods, for and on behalf of plaintiff, against marine risks.

"While it is true that the open and running policies may have been in existence before the goods in question were purchased by plaintiff and shipped abroad, yet those policies were not made applicable to said goods until the respective cables were sent from Manila to Barcelona and plaintiff's office in Barcelona insured the goods as set forth in the statement of facts. Thus the goods were insured against fire after they were placed in warehouse in the Philippines and a cable was sent from Manila giving their value, and they were insured against marine risks after they were placed on board ship in Manila and a cable was sent from Manila giving the value of the shipment."

As the trial court says:

"The present case is unique."

That is true. Neither party has cited a decision under like statute, and in so far as we are advised, there is no like statute.

In legal effect there is no prohibition against a person doing business in the Philippine Islands insuring property here with an insurance company, which is not authorized to do business here. The Government says that you can insure your property in either a foreign or domestic insurance company, but if you insure it in a foreign insurance company, then you must pay the 1% tax which an insurance company authorized to do business in the Philippine Islands is required to pay to the Government, and the whole matter is left entirely to the discretion of the insured. That is not discrimination. Neither does it "deprive any person of life, liberty, or property, without due process of law," and, in actual practice, "the rule of taxation is uniform," and the law in question is alike as to any and all persons similarly situated. To hold otherwise would be to require a domestic insurance corporation to pay a tax of 1% on its premiums collected, and to permit a person having property here to insure it in a foreign corporation not authorized to do business in the Philippines, and to avoid payment of the 1% tax. The law in question was enacted to prevent the doing of that very thing.

Under all of the circumstances, we are not prepared to hold the law unconstitutional.

The judgment of the lower court is affirmed, with costs.

Ten days after the publication of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below.

It is so ordered.

We concur:—

RAMÓN AVANCEÑA.
GEO. A. MALCOLM.
IGNACIO VILLAMOR.
JAMES A. OSTRAND.
NORBERTO ROMUALDEZ.
CHARLES A. JOHNS.

JOHNSON AND STREET, *J.J.*, dissent in a separate opinion.

NOTE:—Mr. Justice Villa-Real took no part in the consideration of this case.

JOHNSON AND STREET, *J.J.*, dissenting:

We regret that we are unable to concur in the decision of the court in this case. By section 1505 of the Administrative Code a tax equivalent to one per centum of the total premiums collected is imposed on all insurance companies doing insurance business of any sort in the Philippine Islands; and the closing *proviso* to section one of Act No. 2430 in effect declares that in all cases where insurance is effected on property in these Islands in a foreign company not authorized to do business here, and without the intervention of an agent—with the result that the tax collector cannot get at the company for the purpose of collecting the tax. It shall be paid by the owner of the property insured. As put in the brief of the Attorney-General the Government says in substance to the owner: "If you insure your property with insurance companies paying taxes to me you pay no taxes. If you insure it with insurance companies which do not and cannot be made to pay taxes to me because they are beyond my jurisdiction, you pay the taxes that leak from my coffers on account of your act."

Is this a legitimate exercise of the taxing power? We think not. The circumstance that the person primarily liable for a tax cannot be reached for the purpose of collecting it, supplies no justification for taking the tax out of another. A law so providing is arbitrary and capricious and in our opinion constitutes a violation of the rule of uniformity prescribed in section 3 of the Jones Law and is a denial of the equal protection of the law guaranteed by the same section.

The requirement that the rule of taxation shall be uniform not only means that in taxes on property the rate shall be uniform but also that in business, occupation and privilege taxes generally, the amount of the taxes shall be the same for all persons circumstanced alike, and that further more the classification of persons for the purposes of such taxation shall be reasonable and not arbitrary. (37 Cyc., 732-736.)

In Southern Railway *vs.* Greene, 216 U. S. 400, 54 L. ed. 536, the case was presented of a foreign railway corporation that had come into the state of Alabama in compliance with its laws, had therein acquired property of a fixed and permanent nature, upon which it had paid all the taxes therefor levied by the state. The legislature of the state then passed a law imposing on foreign railway corporations an additional franchise tax for the continued privilege of doing business within the state. No such tax was imposed upon domestic corporations carrying on a precisely similar business. It was held that the complainant corporation was *a person* within the jurisdiction of the state and that the statute complained of deprived it of the equal protection of the law, as the classification was arbitrary and unreasonable. Said the court: While reasonable classification is permitted, without doing violence to the equal protection of the laws, and such classification must be based upon some real substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling its classification."

If the legislature, in creating the tax on insurance contracts, had placed the burden of paying the tax on *all owners* alike, the

present plaintiff would undoubtedly have been liable. But when those owners who place their insurance directly in a foreign company without the intervention of an agent are singled out for taxation merely because the insuring company cannot be reached the classification becomes discriminatory and vicious.

The author of the note to Hager *vs.* Walker, 129 Am. St. Rep., 257, observes that a statute or ordinance which, in imposing license taxes, discriminates in favor of residence of the city or state as against non-residence in the same class is unconstitutional. Says he: "Such classification, in the sole ground of residence, cannot be sustained. It is arbitrary, and unreasonable, tends to restrain trade and to create monopoly, denies the equal protection of the laws, in so far as it applies to residents of other states violates the rule that the citizens of each state are entitled to all the immunities of the citizens of the several states, and perhaps is an interference with interstate commerce." We are of course not here concerned with any infringement of the rights of citizens of the United States with the reference to other states of the Union, since the case before us presents the phase of a contract made between the owner of property in these Islands and a foreign corporation; but the discrimination here appears to be equally invidious and repugnant to the sense of international comity.

In Juniata Limestone Co. *vs.* Fagley, 187 Pa. St. 193, 67 Am. St. Rep., 597, it appeared that the legislature in the state of Pennsylvania had passed a law imposing a tax on employers of foreign born, unnaturalized male persons, while no such provision was made with respect to citizens of the state. It was held that the act was unconstitutional, as being in conflict with the fourteenth amendment of the federal constitution and with a proviso in the state constitution providing that all taxes should be uniform upon the same class of subjects. (See State *vs.* Goodwill, 33 W. Va. 179, 25 Am. St. Rep., 863; Ex Parte Kuback, 85 Cal., 274, 20 Am. St. Rep. 226.)

The undersigned are therefore of the opinion that judgment should be reversed and the tax returned to the plaintiff.

(Sgd.) E. F. Johnson.
Chas. A. Street.

On October 6, 1925, the Clerk of the Supreme Court of the Philippine Islands entered the final judgment which reads as follows:

[CAPTION AND TITLE OMITTED]

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the twenty-fifth day of September, A. D. Nineteen hundred and twenty-five;

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the fifteenth day of October, nineteen hundred and twenty-four, and from which the above-entitled appeal was taken, be, and the same is hereby, affirmed with costs.

It is further ordered that the appellee recover from the appellant the sum of ₱40.00, as costs.

(Sgd.) V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

In the Supreme Court of the Philippine Islands

I, V. ALBERT, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing forty-six (46) printed pages contain a true and correct transcript of the record of the case entitled, COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellant, *versus* COLLECTOR OF INTERNAL REVENUE, Defendant and Appellee, concerning assessment and collection of tax, bearing No. 23400 of the docket of this Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 5. day of February, A. D., Nineteen hundred and twenty-six.

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 3, 1926

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1926

No. 1[redacted] 3[redacted] 42

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS,
Petitioner,

vs.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

AND

BRIEF IN SUPPORT THEREOF

[redacted]

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1926

No.

COMPANIA GENERAL DE TABACOS DE FILIPINAS,
Petitioner,

vs.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

To the Honorable William Howard Taft, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The petitioner here, respectfully shows to this Honorable Court that it did on September 29, 1923 (R. 3), file in the Court of First Instance of the City of Manila in the Philippine Islands a complaint setting forth two separate causes of action.

The first of said causes of action avers in substance (R. 4) that petitioner is a Spanish corporation and is

licensed to do business in the Philippine Islands, and maintains its principal office there in the City of Manila; that respondent is the Collector of Internal Revenue of said Islands; that petitioner in the year 1922, did, by contracts made in London, England, insure certain of its property situate in the Philippine Islands with the Guardian Assurance Company, of London, England, a foreign insurance company, and did pay to said company in London certain premiums on said insurance; that said Assurance Company is licensed to do business in the Philippine Islands and is there represented by various firms; that all of the insurance so effected was obtained by petitioner itself from said Assurance Company without the intervention of any local representative or agent of said Assurance Company in the Philippine Islands; that the respondent pretending to act under the provisions of Section 192 of Act No. 2430 unlawfully levied and assessed against, and collected from, petitioner a tax of one (1%) per cent. upon the amount of the premiums paid by the petitioner upon said insurance, in the sum of forty-eight and 32/100 pesos (P48.32), and that petitioner in order to avoid the infliction upon it of fines and penalties and the distraint of its property, paid said sum under protest in writing; but that defendant denies said protest and upon demand has failed and refused to return the said sum to petitioner.

The substance of the second cause of action (R. 5) is that during said year, 1922, petitioner did from time to time export from the Philippine Islands sundry lots of merchandise belonging to it and did from

time to time during the said year, by contracts made and entered into in Paris, France, insure its said merchandise against marine risks under policies issued to it in Paris, France, by Le Comité des Assurances Maritimes de Paris, of Paris, France, a foreign marine insurance corporation not licensed to do business in the Philippine Islands and having no agent or other representative there, and did pay to said insurance company in Paris, France, in French currency, the premiums on said insurance; that all of said insurance was obtained by petitioner itself without the use of the services of any representative of said insurance company in the Philippine Islands; that the respondent pretending to act under the provisions of said Section 192 (referred to in the first cause of action) unlawfully levied and assessed against, and collected from, petitioner a tax of one (1%) per cent. on said premiums amounting to one thousand and 50/100 pesos (P1,000.50); and that petitioner paid said sum under protest in writing; but that respondent denies said protest and has refused and failed to return the said sum to petitioner.

The prayer of the complaint (R. 7) was for judgment for the said sums so paid to said respondent, with costs.

An answer was filed by the Attorney General of the Philippine Islands wherein it was alleged (R. 8) that the taxes sought to be recovered by petitioner were lawfully levied, assessed and collected under the provisions of said Section 192.

Said cause was heard and determined on an agreed statement of facts, and on October 15, 1924 (R. 27),

judgment was entered in said Court dismissing petitioner's complaint, with costs to respondent.

Thereafter an appeal was taken by petitioner to the Supreme Court of the Philippine Islands and the case was duly docketed in said Court on November 29, 1924 (R. 28), and petitioner filed its brief therein on January 28, 1925, and did assign the following errors (R. 28):

1. The lower court erred in not declaring Sec. 192 of Act No. 2427 as amended by Act No. 2430, void, unconstitutional and violative of Section 3 of the Jones Law—Act of Congress of August 29, 1916,—which provides that the rule of taxation in the Philippine Islands shall be uniform.

2. The lower court erred in not declaring Sec. 192 of Act No. 2427 as amended by Act No. 2430, void, unconstitutional and violative of that certain other provision of Section 3 of the Jones Law which provides that no law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty, or property without due process of law.

3. The lower court erred in not holding that the cables sent by plaintiff to its head office in Barcelona (advising Barcelona of the value of goods on deposit or being shipped by plaintiff from these Islands) were collateral and subsequent to the creation of the principal contracts of foreign insurance.

On March 24, 1925 (R. 29), the brief of respondent was filed, and on September 26, 1925, the Supreme Court of the Philippine Islands rendered its decision whereby it did affirm the judgment of the lower Court (R. 29), and on October 6, 1925, final judgment was entered by the clerk of the Court affirming the

judgment of the Court of First Instance, with costs. (R. 46.)

Your petitioner is advised that said judgment of said Supreme Court of the Philippine Islands is final and is erroneous and that this Honorable Court should require the case to be certified to it for its review and determination upon the following grounds:

The statutory provision in question, Section 192 of Act No. 2427 (Insurance Act), as amended by Act No. 2430, (App. ii), after forbidding any person "to procure, receive, or forward applications for insurance in or to issue or to deliver or accept policies of or for any company" not authorized to transact business in the Islands, excepting an insurance agent to whom a permit shall have been issued for the purpose; and after providing for annual reports by such agent of the amount of premiums received by the company represented by him, and requiring the payment by him of a certain tax, continues:

> "*And provided further,* that the prohibitions of this section shall not affect the right of an owner of property to apply for and obtain for himself policies in foreign companies in cases where said owner does not make use of the services of any agent, company, or corporation residing or doing business in the Philippine Islands. In all cases where owners of property obtain insurance directly with foreign companies, it shall be the duty of said owners to report to the Insurance Commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so." (App. iv.)

No other policy holders are required to pay any tax. But insurers are required to pay a tax of one (1%) per cent. of their premiums. (App. i.)

1. The statute violates the rule as to uniformity of taxation established by the provision of the Jones Law referred to in specification of errors, No. 1 (supra), because applicable only to policy holders of foreign companies.

2. The statute deprives such policy holders of their liberty and property without due process of law, in violation of the provisions of the Jones Law referred to in specification No. 2 (supra).

3. The Manila branch of petitioner from time to time, by cable, notified its head office at Barcelona, Spain, of the value of goods purchased and deposited in its warehouses in the Islands, or aboard ship, whereupon the head office insured the goods against fire, or marine risks, "under open and running policies of insurance carried by it" with foreign companies abroad. (R. 8-9.)

The Insurance Act (Act No. 2427) defines "open" and "running" policies, as follows:

> Sec. 57. "An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss."
>
> Sec. 59. "A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements."

The cablegrams sent by the Manila agents of the company to its officers at Barcelona merely afforded

the necessary information to define ever varying deposits or shipments of goods within the protection of existing policies.

The questions involved here are of great public concern and grave importance to the commercial, mercantile and business interest of the Philippine Islands and many of the largest mercantile and trading houses are directly interested in their determination. They likewise affect the revenue of the Philippine Government itself.

In determining this case the Supreme Court of the Philippine Islands has decided certain federal questions of substance not heretofore determined by this Honorable Court, and in a way probably not in accord with applicable decisions of this Court, to wit the question of the construction of Section 3 of the provisions of the Act of Congress of August 29, 1916 (known as the Jones Law, which constitutes the organic law of those Islands), which provides (1) that the rule of taxation in the Philippine Islands shall be uniform, and (2) that no law shall be enacted there which shall deprive any person of life, liberty or property without due process of law.

Moreover, the questions involved, which are of course, equally important questions of federal law, under Amendment XIV of the Constitution of the United States have never been settled by this Court unless the cases relied upon by petitioner may be deemed to have settled them adversely to the decision here complained of. The decision itself shows evident

embarrassment in this respect, dwelling, as it does, upon the fact that "the case is one of first impression" and that, "so far as the Court is advised, there is no like statute". (R. 40.)

Again the decision was reached by a divided Court, a vigorous dissent having been written by Justices Johnson and Street. (R. 43.)

Wherefore, and for the reasons set out at length in the brief filed herewith in support of this petition, petitioner prays that a writ of certiorari be issued to the Supreme Court of the Philippine Islands, agreeable to the provisions of Section 7 of the Act of Congress of Feb. 13, 1925, c. 229, 43 Stat., commanding it to certify to this Court for its review and determination a transcript of the proceedings in said case, and that the judgment of said Court be reversed.

Dated, San Francisco,
March 29, 1926.

W. F. WILLIAMSON,
B. M. AIKINS,
Attorneys for Petitioner.

FISHER, DEWITT, PERKINS & BRADY,
Of Counsel.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1926

No.

COMPANIA GENERAL DE TABACOS DE FILIPINAS,
Petitioner,

vs.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The opinion delivered in the Supreme Court of the Philippine Islands has not yet appeared in the Philippine reports, but appears in full in the record accompanying this petition at page 28.

The dissenting opinion of Justices Johnson and Street will be found at page 43.

The opinion of the Court of First Instance is also set forth in the record at pages 11 to 27 inclusive.

GROUNDS UPON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

(1) The date of the judgment to be reviewed is October 6, 1925. (R. 46.)

(2) The specific claims advanced in, and overruled by the Supreme Court of the Philippine Islands, are those set forth in the specifications of error, infra, to wit in substance that the provision of Section 192 of Act No. 2427 of the Philippine Islands, as amended by Act No. 2430, which reads that:

> "In all cases where owners of property obtain insurance directly with foreign companies, it shall be the duty of said owners to report to the Insurance Commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so." (App. iv.)

no tax being imposed upon other persons who obtain insurance, though a tax is imposed upon premiums received by insurance companies (App. i), is in conflict (a) with the provision of Section 3 of the Jones Law (Act of Congress of August 29, 1916) which provides that the rule of taxation in the Philippine Islands shall be uniform (R. 33) and, (b) with the provision of the same section of the Jones Law which provides that no law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty, or property, without due process of law (R. 33) and (c) that cables sent by a branch office at Manila to the home office of the petitioner

corporation at Barcelona, Spain, advising it of the value of deposits of merchandise in warehouses and aboard ships, were collateral and subsequent to the principal contracts of foreign insurance (R. 33), which, under the stipulated facts, were open and running contracts of insurance theretofore effected by the home office of petitioner outside of the Philippine Islands. (R. 30-31.)

These claims were noted by the Court below in its statement of the case (R. 33) and were disposed of adversely to petitioner in its decision, in the order above stated. (R. 34, 38, 40.)

(3) The jurisdiction of the Court is found in Section 7 of the Act of Congress of February 13, 1925, c. 229, 43 Stat., Sec. 1225c Comp. Stat. U. S., which is set forth on page 7 of the appendix to the Rules of this Court.

And the case is believed to be a proper one for the exercise of the discretion of the Court under Section 5 of Rule 35 of this Court, because the question involved herein and decided by the Supreme Court of the Philippine Islands is a federal question of substance, to wit the question whether an act of the Philippine Islands imposing a so-called tax upon those owning property in the Islands who exercise their right of entering into contracts outside of the Islands insuring that property, is in conflict with Section 3 of the Jones Law (Act of Congress of Aug. 29, 1916), which provides that the rule of taxation in the Philippine Islands shall be uniform and that no law shall be enacted in the Philippine Islands which

shall deprive any person of life, liberty or property without due process of law, and the question unless already determined by this Court in the cases about to be discussed (*Allgeyer v. State of Louisiana,* 165 U. S. 578; *St. Louis Cotton Compress Co. v. Arkansas,* 260 U. S. 346), was decided by the Court below in a way probably not in accord with those cases;

And because the decision complained of is, in effect, and by reason of the similarity of the latter provision of the Jones Law to the language of that part of Section 1, Article XIV of the Constitution which provides that no state shall deprive any person of life, liberty, or property, without due process of law, an important question of federal law arising under the Constitution, and has been decided in a way probably in conflict with applicable decisions of this Court;

And, finally, because the question of the validity of the law in question is one of grave public importance to the business and commercial interests of the Philippine Islands, and concerns the revenues of the Insular Government, and the decision was rendered by a divided Court.

(4) Similar questions arising under state statutes have been reviewed by this Court (*Allgeyer v. Louisiana,* supra; *St. Louis Cotton Compress Co. v. Arkansas,* supra), and express jurisdiction by certiorari is conferred by the recent Act of March 13, 1925, amending the Judicial Code. (For convenient reference see page 7 of appendix to Revised Rules of Supreme Court.) See also Rule 39, and *Wicomico County Com's v. Bancroft,* 203 U. S. 112.

STATEMENT OF CASE.

The Supreme Court of the Philippine Islands has fairly and concisely stated the facts of the case, and we can do no better than adopt its statement.

"Plaintiff alleges 'that it is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila'. That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue of the Philippine Islands. That during the year 1922, by contracts made in London, England, plaintiff insured certain of its properties in the Philippine Islands with the Guardian Assurance Company, of London, England, a foreign insurance company, and paid it premiums thereon in the sum of P4,832.35. That said assurance company is licensed to do business in the Philippine Islands, and is represented by local agents. That such insurance was obtained by the plaintiff itself from the assurance company, of London, without the intervention of any agent residing or doing business in the Philippine Islands. That the defendant, under the provisions of Section 192 of Act No. 2427, as amended by Act No. 2430, has unlawfully and illegally levied and assessed against the plaintiff a tax of one per centum upon the amount of the premiums paid by plaintiff upon its foreign insurance, amounting to P48.32. That plaintiff paid this amount under written protest, and that the defendant has overruled and denies its protest, and has refused to return the money to the plaintiff.

Like allegations are made in a second cause of action in which the plaintiff seeks to recover the further sum of P1,000.50.

"For answer the defendant alleges that the taxes sought to be recovered were lawfully and legally levied, assessed and collected by the said Collector under the provisions of the act in question.

"The case was tried and submitted upon the following stipulation of facts:

'AGREED STATEMENT OF FACTS.

'Come now the Compania General de Tabacos de Filipinas, plaintiff, and the Collector of Internal Revenue, defendant, by their undersigned attorneys, and stipulate and agree upon the following statement of facts in this case:

I.

'That the plaintiff is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila.

II.

'That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue for the Philippine Islands.

III.

'That, during the year 1922, plaintiff purchased and deposited in its warehouses in the Philippine Islands, certain goods, wares and merchandise and, from time to time, by cable, notified its head office in Barcelona, Spain, of the value thereof.

IV.

'That plaintiff's head office in Barcelona thereupon insured said goods, wares and merchandise, for and on behalf of plaintiff, against fire, under open and running policies of insurance carried

by it with the Guardian Assurance Co., of London, England, and did pay to said Guardian Assurance Company in London, premiums on said fire insurance, during said year, of the value of P4,832.25.

V.

'That plaintiff's head office in Barcelona, in turn, charged to plaintiff's account the expense of said premiums paid by it as aforesaid, in the sum of P4,832.25, for said year 1922.

VI.

'That, subsequent to the purchase by plaintiff of the goods, wares and merchandise referred to hereinabove, plaintiff did, from time to time during the year 1922, ship said goods abroad, for sale, and did, by cable. at the time of making said shipments. notify its head office in Barcelona, Spain, of the value of said shipments.

VII.

'That plaintiff's head office in Barcelona thereupon insured said shipments of goods, for and on behalf of plaintiff, against marine risks, under open and running policies of insurance carried by it with Le Comité des Assurances Maritimes de Paris, of Paris, France, and did pay to said Comité des Assurances Maritimes, in Paris, France, premiums on said marine insurance, during the year 1922, of the value of P100,050.44.

VIII.

'That plaintiff's head office in Barcelona, in turn, charges to plaintiff's account the expense of said premiums paid by it, as aforesaid, in the sum of P100,050.44, for the year 1922.

IX.

'That both the Guardian Assurance Co. of London and Le Comité des Assurances de Paris, are foreign corporations, the former being licensed to do business in the Philippine Islands and having an agent or agents in said Islands; that the

latter company (Le Comité des Assurances de Paris) is not licensed to do business in the Philippine Islands and has no agent therein.

X.

'That all insurance effected as hereinabove recited was obtained in the manner hereinbefore recited and without the use of the services or intervention of any agent, company, corporation or other representative of the aforesaid two foreign insurance companies, residing or doing business in the Philippine Islands.

XI.

'That on or about the 25th day of June, 1923, the defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, and acting under the pretended authority of Sec. 192 of Act 2427, as amended by Act No. 2430, levied, assessed and collected from plaintiff a tax of 1% upon the premiums paid by plaintiff as aforesaid, as follows:

Guardian Assurance Co., Premium	P 4,832.25—	Tax P 48.32
Le Comité des Assurances de Paris, Premium	100,050.44—	" 1,000.50
A total tax in the sum of.....		P1,048.82

XII.

'That on the 28th day of June, 1923, plaintiff paid to defendant said tax, in the sum of P1,048.82, under instant protest in writing.

XIII.

'That plaintiff's protest was overruled and denied by defendant on the 27th day of July, 1923; whereupon and on the 16th day of August, 1923, plaintiff filed its action for the recovery of said taxes.

XIV.

'It is further stipulated that both parties to this action waive the taking of testimony in open

court and agree that this cause be submitted for decision upon the foregoing facts.

'It was further stipulated that:

'It is agreed that, had any losses occurred to plaintiff, during the year 1922, under the insurance policies, carried by plaintiff's head office in Barcelona, Spain, with the Guardian Assurance Co., of London, England, and with Le Comité des Assurances Maritimes de Paris, of Paris, France, for and on behalf of plaintiff, such losses would have been paid to plaintiff's head office, in London and/or Paris, as the case might be, for plaintiff's account.' " (R. 29-33.)

No tax was imposed upon any policy holders who purchased insurance policies from domestic insurance companies or from Philippine agents of foreign companies licensed to do business in the Philippine Islands, such companies themselves, however, being required to pay a tax of one per cent. of their premiums. (App. i.)

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED.

The errors which we desire to urge are the following:

I.

"The lower Court erred in not declaring Section 192 of Act No. 2427 as amended by Act No. 2430, void, unconstitutional and violative of Section 3 of the Jones Law—Act of Congress of August 29, 1916—which provides that the rule of taxation in the Philippine Islands shall be uniform.

II.

"The lower Court erred in not declaring Section 192 of Act No. 2427, as amended by Act No. 2430, void, unconstitutional and violative of that certain other provision of Section 3 of the Jones Law which provides that no law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty, or property without due process of law.

III.

"The lower Court erred in not holding that the cables sent by plaintiff to its head office in Barcelona (advising Barcelona of the value of goods on deposit or being shipped by plaintiff from these Islands) were collateral and subsequent to the creation of the principal contracts of foreign insurance." (R. 28, 29-33.)

ARGUMENT.

The underlying question at the very heart of this controversy is whether the exaction imposed upon the owners of insurance obtained abroad is a tax at all. The mere fact that the legislature characterizes it as a tax does not, of course, make it such. And if it is not a tax it is either a fine for exercising a constitutional right beyond the jurisdiction of the Islands or a mere arbitrary and capricious exaction, and in either case wholly outside of the lawful authority of the legislature.

If it is a tax, the question arises—What kind of a tax is it?

I. If it be regarded as a property tax, and even if we assume that the legislature has the right to levy taxes beyond the jurisdiction of the Islands, it is void because not uniform, other owners of the same class of property, i. e., policies of marine and fire insurance, obtained in the islands, being wholly free from any such tax.

II. If it be regarded as an occupation or privilege tax, and even if we disregard the fact that petitioner is not engaged in the business of insurance and is not exercising any privilege conferred by the legislature of the Philippines, the tax is void because it deprives petitioner of its liberty, and of its property, without due process of law.

III. The insurance policies in question here were made in Europe. They were open and running contracts, contemplating the coverage of such merchandise as might from time to time be stored in petitioner's warehouses in the Philippines or loaded aboard ships by it for transportation on the high seas. To carry out these contracts it was obviously necessary to advise the insurers from time to time of such storages and shipments, thereby completing the steps necessary to bring the various lots of merchandise to be covered, within the full protection of the policies. To provide its officers at Barcelona with this information, its branch office at Manila cabled it from time to time as necessary.

It is our contention that the coverage following such cablegrams did not constitute new insurance, and the sending of the cablegrams was not "applying for

and obtaining policies in foreign companies" within Section 192 of the statute here in question (App. ii), even if that section were valid.

First Assignment of Error.

The Lower Court Erred in Not Declaring Sec. 192 of Act No. 2427, as Amended by Act No. 2430, Void, Unconstitutional and Violative of Section 3 of the Jones Law—Act of Congress of August 29, 1916,—Which Provides That the Rule of Taxation in the Philippine Islands Shall be Uniform.

The sole question at issue in this case is whether or not Section 192 of Act No. 2427, as amended by Act No. 2430 is valid and constitutional. Our contention is that it is absolutely void in so far as it attempts to tax owners of property in these Islands who—directly, and without the intervention of any agent of a foreign insurance company,—obtain insurance abroad in foreign insurance companies, whether said companies are licensed to do business here or not.

The whole case revolves around the last proviso of Section 192 of Act No. 2427, as amended by Act No. 2430, which reads as follows:

> "* * * *And provided, further,* That the prohibitions of this section shall not affect the right of an owner of property to apply for and obtain for himself policies in foreign companies in cases where said owner does not make use of the services of any agent, company, or corporation residing or doing business in the Philippine Islands. In all cases where owners of property obtain insurance directly with foreign companies, it shall be the duty of said owners to report to the Insurance Commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and shall pay the tax of one per

centum on premiums paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so."

If this tax be regarded as a property tax it is subject to the rule of "uniformity".

Section 3 of the Jones Law, in part, provides:

> "That the rule of taxation in these Islands shall be uniform." (Act of Congress of August 29, 1916; App. iv, v.)

One of the earliest cases in which a law imposing a tax on citizens of a state for insuring in foreign insurance companies, and a case squarely in point in this present proceeding, if regarded as a property tax, is that of *Re Thomas Page,* 60 Kan. 842, 58 Pac. 981, 47 L. R. A. 68, in which the legislature of the State of Kansas passed a law entitled—

> "An Act Providing for the Taxation of Contracts of Insurance Made with Insurance Companies not Authorized to do business in Kansas, and Providing for the Enforcement Thereof."

Thomas Page, owner of the Mid-Continent Mills, in Topeka (Kansas), wrote to the Indiana Millers' Mutual Fire Insurance Company of Indianapolis, Indiana, a foreign insurance company not licensed to do business in the State of Kansas, for a five-year insurance policy of $2000, remitting $30, the cost thereof. The application and money were duly received by the Indianapolis Insurance Co., in Indianapolis, and it, thereupon, in Indianapolis, executed the desired policy and mailed same to Page, at Topeka. Subsequent thereto the Superintendent of Insurance of Kansas

demanded that Page exhibit this foreign insurance policy contract for purposes of taxation in a sum equal to ten per cent. of the amount of premiums paid or contracted to be paid thereon. Page refused to comply with the demand and was arrested. The Supreme Court of Kansas said:

> "It will be observed that the burden imposed by the act is not a license, nor a charge placed upon a privilege, franchise, or occupation. It is specifically designated as a tax, and is levied upon insurance contracts, which are treated as taxable assets and property of the insured. The act is an anomaly in the method of raising public revenues, and constitutes a wide departure from the means of taxation heretofore employed in this state. It is said that a tax is ordinarily levied on the property, income, or receipts of the taxpayer, and not upon what he has paid out. Counsel for the petitioner assert that 'this is the pioneer effort to tax losses and disbursements, instead of profits and accumulations. It is the only recorded instance of requiring a man to pay a tax, not upon what he hath or seemeth to have, but confessedly upon what he hath not'. Such contracts, however, indemnify the insured against loss, and have some of the characteristics of bonds, mortgages, and other like securities which are made the subjects of taxation. They have property value susceptible of measurement, and it was competent, therefore, for the legislature to treat them as property, as it did, and to make them subject to taxation. Atchison, T. & S. F. R. Co. v. Howe, 32 Kan. 737, 5 Pac. 397. Being a property tax, the constitutional limitations upon the taxation of all the property in the state are applicable and controlling. In the absence of constitutional restrictions, the sovereign power of the state may be exercised almost without limitation in determining what should be subject to taxation, and the manner of levying and collecting

taxes. Of course, arbitrary and unequal exactions cannot be levied upon persons or property, nor can revenues raised by the exercise of this power be expended for other than public purposes. Unless, however, a tax for public purposes is imposed on false and unjust principles, or violates an express provision of the Constitution, the will of the legislature is conclusive. Our Constitution contains an express limitation on the power to tax, by requiring the legislature to 'provide for a uniform and equal rate of assessment and taxation.' While this provision has no application to license, capitation, or special taxes, it does apply to direct taxes on property. Hines v. Leavenworth, 3 Kan. 200; Ottawa County Comrs. v. Nelson, 19 Kan. 234, 27 Am. Rep. 101. As will be observed, the Constitution contemplates that there will be an assessment or valuation of the property to be used as a basis of the levy, and in this way equality and uniformity of taxation may be had upon all the property within the taxing district. Although assessment is the most important of all the steps in the imposition of taxes, no assessment or valuation is required by the act, or made, upon the property sought to be taxed in this case. 'It will be observed that the Constitution does not in terms require that the property in the state should be taxed according to its value, but it must be apparent to everyone that such was the intention of the Constitution makers. Taxes cannot be levied by an equal and uniform rate, except upon the value.' Hines v. Leavenworth, 3 Kan. 200. To accomplish the uniformity and equality required by the Constitution, it would appear that assessment or valuation is indispensable; and yet in this case the legislature, without assessment or valuation of the property, attempts to make an arbitrary exaction. All other property in the state is required to be taxed at its true value in money, but here no account is taken of the solvency of the company or the value of the security or policy. However values of

other property may fluctuate or the rate of taxation thereon may change from year to year, no change is made on the tax levied on the property in question. The lack of uniformity is manifest in another way: One taxpayer has a policy written in the state by a company with authority, upon which no tax is imposed, while his neighbor has one written by an unlicensed company at Indianapolis, or other place outside of the state, which is subject to taxation. Taxes are uniform and equal when imposed upon all property of the same character within the taxing district, and yet here the insured pays a 10 per cent tax upon a policy written outside of the state, while his neighbor pays nothing upon a policy of equal value, and affording the same protection, because it is written within the state. Contracts of insurance written outside of the state cannot be regarded as illegal. Aside from the consideration that they may not be Kansas contracts, and are therefore beyond the reach of the legislature, the act itself contemplates that such contracts may and will be made, and when made are to be treated as property within the state, and become the subject of taxation here. This is an invidious discrimination, purposely made, and is a distinct departure from the constitutional rule of uniformity. State ex rel. Atty. Gen. v. Leavenworth County Comrs., 2 Kan. 61; Hines v. Leavenworth, 3 Kan. 200; Graham v. Chautauqua County Comrs., 31 Kan. 473, 2 Pac. 549; Atchison, T. & S. F. R. Co. v. Howe, 32 Kan. 737, 5 Pac. 397; Marion & M. R. Co. v. Champlin, 37 Kan. 682, 16 Pac. 222. See also People v. Hastings, 29 Cal. 449; Marsh v. Clark County Supers., 42 Wis. 502; Slaughter v. Louisville, 89 Ky. 112, 8 S. W. 917."

Re Thomas Page, 60 Kan. 842, 47 L. R. A. 68, 69, 70.

And the Supreme Court of the Philippine Islands, in the case of *Churchill v. Concepción,* 34 Phil. 969,

speaking of the requirement of uniformity of taxation in this jurisdiction, said:

> "'Uniformity in taxation—says Black on Constitutional Law, page 292—means that all taxable articles or kinds of property, of the same class, shall be taxed at the same rate. It does not mean that lands, chattels, securities, incomes, occupations, franchises, privileges, necessities, and luxuries, shall all be assessed at the same rate. Different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times.'
>
> "A tax is uniform when it operates with the same force and effect in every place where the subject of it is found. (State Railroad Tax Cases, 92 U. S. 575.) Tthe words 'uniform throughout the United States', as required of a tax by the Constitution, do not signify an intrinsic, but simply a geographical, uniformity, and such uniformity is therefore the only uniformity which is prescribed by the Constitution. (Patton v. Brady, 184 U. S. 608; 46 L. Ed. 713.) A tax is uniform, within the constitutional requirement, when it operates with the same force and effect in every place where the subject of it is found. (Edve v. Robertson, 112 U. S. 580; 28 L. Ed. 798.) 'Uniformity', as applied to the constitutional provision that all taxes shall be uniform, means that all property belonging to the same class shall be taxed alike. (Adams v. Mississippi State Bank, 23 South 395, citing Mississippi Mills v. Cook, 56 Miss. 40.)" * * *
>
> *Churchill v. Concepción*, 34 Phil. 969, at pages 976-7.

The majority opinion of the Court below attempts to distinguish this from the *Page* case upon the ground that "under the Kansas constitution, there must be a uniformity and equal rate of both 'assess-

ment' and 'taxation' ", and that the statute there in question failed to provide "for the assessment of the value of the premiums". It overlooks the fact that, as stated in the *Page* case, "assessment is the most important of all the steps in the imposition of taxes", and that "taxes cannot be levied by an equal and uniform rate, except upon the value."

The principle of uniformity in taxation requires uniformity in the mode of assessment as well as in the rate charged.

> *County of Santa Clara v. Southern Pacific Co.,* 18 Fed. 385 (affirmed in 118 U. S. 394);
> *Railroad etc. Cos. v. Board of Equalizers of Tennessee,* 85 Fed. 302.

Again, the decision complained of distinguishes the *Page* case from that now at bar because the tax in the *Page* case was 10% and here is but 1%, and because of the fact that the insurance law of the Philippine Islands exacts from insurance companies a tax of 1% on the premiums received by them in the Philippines.

(1) The suggestion that a decision holding invalid a law exacting a tax of ten per cent., because lacking in uniformity, does not apply where the tax is but one per cent., requires no comment, the thing forbidden being the fact of discrimination and not its extent.

(2) And the argument that, "under the law here, the Government receives 1% of all premiums paid on domestic insurance" (R. 37) and that the tax exacted of a person who secures insurance abroad is no greater, is an attempt to justify the tax *because of the*

uniformity of the revenue received by the treasury of the Philippine Islands. But it is too obvious for argument that the rule of uniformity was not made for the protection of the Government imposing it, but for that of those upon whom its levies are made.

Under Section 192 no tax is demanded of the owner of property whose insurance is effected in domestic insurance companies, or in the Philippine Islands, in foreign insurance companies licensed to do business. Yet if the owner of that same property desires to insure *abroad* he is *taxed*. Here we have a clear case of discrimination—"invidious discrimination"—between the owners of *domestic made* and the owners of *foreign made* contracts of insurance.

Again, in further support of the statute, the majority below assume that "In actual practice, the amount of any tax paid on the premiums collected by the insurance company is added to, and becomes a part of, the premium itself and, in the final analysis, is paid by the insured." (R. 38.)

No such practice is alleged in the pleadings or shown by the evidence, but even if it were admitted that such a practice existed and was universal, it would come to this that the law is to be held constitutional because insurance companies, to evade the payment of their taxes, choose to change the amount of their premium charges, and this necessarily *after* the law has been enacted. Quaere, would the law become unconstitutional if some of the companies were to cut their rates? It is a startling doctrine that would rest the question

of the constitutionality of one statute upon the arbitrary practice of those who are taxed under another!

We respectfully submit, therefore, that Section 192 of Act No. 2427, as amended by Act No. 2430, is void, unconstitutional and lacking in uniformity.

Second Assignment of Error.

The Lower Court Erred in Not Declaring Sec. 192 of Act No. 2427, as Amended by Act No. 2430, Void, Unconstitutional and Violative of That Certain Other Provision of Section 3 of the Jones Law Which Provides That No Law Shall be Enacted in the Philippine Islands Which Shall Deprive any Person of Life, Liberty, or Property Without Due Process of Law.

If we regard the tax prescribed in Section 192 of our Insurance Act as a privilege tax, or one in the *nature* of a privilege tax, we submit it is void and unconstitutional in that it deprives property owners in the Philippine Islands of their "liberty"—their free right of conduct with respect to their property—without due process of law. (6 Rul. Cas. Law, pp. 269-270.)

This is one of the fundamental principles of American constitutional law, as laid down in the Fourteenth Amendment to the Constitution of the United States. This amendment reads, in part—

> "* * * nor shall any state deprive any person of life, liberty, or property, without due process of law."

Section 3, of the Jones Law, reads, in part, as follows:—

"That no law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws. * * *"

Sec. 3, Act of Congress of August 29, 1916. (App. iv, v.)

If, therefore, laws of the same type arising under the Constitution are held to be repugnant to the provisions of the Fourteenth Amendment to the United States Constitution, we believe such a view should be the rule of decision under the *Jones* case, as the constitutional prohibitions are identical.

(a) Statutes Forbidding Such Contracts.

The leading case on this question is that of *Allgeyer, et als. v. Louisiana,* 165 U. S. 578, 41 L. Ed. 832, in which the State of Louisiana attempted to enforce the collection of a fine of $1,000 from the defendant Allgeyer and others for the supposed violation of Louisiana Statute No. 66, of 1894, entitled—

"An Act to Prevent Persons, Corporations, or Firms from Dealing with Marine Insurance Companies That Have Not Complied with Law."

This Act, in its material part, reads as follows:

"Be it Enacted by the General Assembly of the State of Louisiana, That any person, firm, or corporation who shall fill up, sign, or issue in this state any certificate of insurance under an open marine policy, or who in any manner whatever does any act in this state to effect for himself, or for another, insurance on property then in this state, in any marine insurance company which has not complied in all respects with the laws of this

state, shall be subject to a fine of $1,000 for each offense, * * *."

Allgeyer et al. v. State of Louisiana, 165 U. S. 578.

Allgeyer and his co-defendants had obtained, from the Atlantic Mutual Insurance Company of New York *in New York,* an *open marine insurance policy* for $200,000.00 to cover cotton in bales purchased and shipped abroad by them. Under that form of policy it was necessary, of course, for Allgeyer and his associates to notify the Atlantic Mutual Insurance Co. of the date, description and value of each shipment of cotton, in order that the amount of damage could be definitely fixed in the event of loss of any particular shipment. Accordingly, on October 23, 1894, Allgeyer, in Louisiana, mailed a communication to the insurance company, in New York, advising it of a shipment abroad of 100 bales of cotton, then in Louisiana, and asking to be covered for the sum of $3,400 under their open policy. This was done for each shipment of cotton. In due course criminal charges were filed against them for violating the above quoted statute (Louisiana Statute of 1894, Act No. 66) and they defended on the constitutional grounds that the statute in question deprived them of their property without due process of law and denied to them the equal protection of the laws, under the United States and the Louisiana Constitutions.

It was further contended that as the insurance policy involved therein was a New York contract, where the contract was entered into and premiums

were paid, the State of Louisiana was without jurisdiction to legislate in respect to the same and that the statute in question violated their rights in depriving them of their right to contract. In passing upon the issues thus raised, the Supreme Court of the United States, speaking through Mr. Justice Peckham, said:

> "There is no doubt of the power of the state to prohibit foreign insurance companies from doing business within its limits. The state can impose such conditions as it pleases upon the doing of any business by those companies within its borders, and unless the conditions be complied with the prohibition may be absolute. The cases upon this subject are cited in the opinion of the court in Hooper v. California, 155 U. S. 648.
>
> "A conditional prohibition in regard to foreign insurance companies doing business within the state of Louisiana is to be found in Article 236 of the Constitution of that state, which reads as follows: 'No foreign corporation shall do any business in this state without having one or more known places of business and an authorized agent or agents in the state upon whom process may be served.'
>
> "It is not claimed in this suit that the Atlantic Mutual Insurance Company has violated this provision of the Constitution by doing business within the state.
>
> "In State v. Williams, 46 La. Ann. 922, the Supreme Court of that state held that an open policy of marine insurance, similar in all respects to the one herein described, and made by a foreign insurance company, not doing business within the state and having no agent therein, must be considered as made at the domicil of the company issuing the open policy, and that where in such case the insurance company had no agent in Louisiana it could not be considered as doing an insurance business within the state.

"The learned counsel for the state also admits in his brief the fact that the contract (i. e., the open policy) was entered into at New York City.

"In the course of the opinion delivered in this case by the Supreme Court of Louisiana that court said:

" 'The open policy in this case is conceded to be a New York contract; hence the special insurance effected on the cotton complained of here was a New York contract.

* * * * * * *

" 'The question presented is the simple proposition whether under the act a party while in the state can insure property in Louisiana in a foreign insurance company, which has not complied with the laws of the state, under an open policy, the special contract or insurance and the open policy being contracts made and entered into beyond the limits of the state. * * * We are not dealing with the contract. If it be legal in New York, it is valid elsewhere. We are concerned only with the fact of its having been entered into by a citizen of Louisiana while within her limits affecting property within her territorial limits. It is the act of the party, and not the contract, which we are to consider. The defendants who made the contract did so while they were in the state, and it had reference to property located within the state. Such a contract is in violation of the laws of the state, and the defendants who made it were within the jurisdiction of the state, and must be necessarily subject to its penalties, unless there is some inhibition in the Federal or state Constitution, or that it violates one of those inalienable rights relating to persons and property that are inherent, although not expressed in the organic law. It does not forbid the carrying on by the insurance company of its legalized business within the state. It is a means of preventing its doing so without subscribing to certain conditions which are recognized as legitimate and proper. It does not destroy the constitutional right of the citizens

of New York to do business within the state of Louisiana or of the citizens of Louisiana from insuring property. It says to the citizens of New York engaged in insurance business that they must, like its own citizens, pay a license and have an authorized agent in the state as prerequisite to their doing said business within its state, and says to its own citizens: You shall not make a contract, while in the state, with any foreign insurance company which has not complied with the laws. You shall not in this manner contravene the public policy of the state in aiding and assisting in the violation of the laws of the state. The sovereignty of the state would be a mockery if it had not the power to compel its citizens to respect its laws. * * * The defendants while in the state undoubtedly insured their property located in the state in a foreign insurance company under an open policy. The instant the letter or communication was mailed or telegraphed the property was insured. The act of insurance was done within the state and the offense denounced by the statute was complete. * * * There is in the statute an apparent interference with the liberty of defendants in restricting their rights to place insurance on property of their own whenever and in what company they desired; but in exercising this liberty they would interfere with the policy of the state, in forbidding insurance companies which have not complied with the laws of the state from doing business within its limits. Individual liberty of action must give way to the greater right of the collective people in the assertion of well-defined policy, designed and intended for the general welfare.'

"The general contract contained in the open policy, as well as the special insurance upon each shipment of goods of which notice is given to the insurance company, being contracts made in New York and valid there, the state of Louisiana claims notwithstanding such facts that the defendants have violated the act of 1894, by doing an act

in that state to effect for themselves insurance on their property then in that state in a marine insurance company which had not complied in all respects with the laws of that state, and that such violation consisted in the act of mailing a letter or sending a telegram to the insurance company in New York describing the cotton upon which the defendants desired the insurance under the open marine policy to attach. It is claimed on the part of the state that its legislature had the power to provide that such an act should be illegal and to subject the offender to the penalties provided in the statute. It is said by the supreme court that the validity of such a statute has been decided in principle in this court in the case of Hooper v. California, 155 U. S. 648.

"We think the distinction between that case and the one at bar is plain and material. The state of California made it a misdemeanor for a person in that state to procure insurance for a resident of the state from an insurance company not incorporated under its laws, and which had not filed a bond required by those laws relative to insurance. Hooper was a resident of San Francisco, and was the agent of the firm of Johnson & Higgins, who were insurance brokers residing and having their principal place of business in the city of New York, but having also a place of business in the City and County of San Francisco, of which the defendant had charge as their employee and agent. In response to a request from a Mr. Mott, a resident of the state of California, the defendant Hooper procured through his principals, Johnson & Higgins, an insurance upon the steamer *Alliance,* belonging to said Mott, in the China Mutual Insurance Company, which was a company not then and there incorporated under the laws of California, and not having itself or by its agent filed the bond required by those laws relating to insurance. The policy was delivered by the defendant Hooper to Mott, the insured, at San Francisco, who thereupon paid Hooper, as agent

of Johnson & Higgins, the premium for the insurance. The case states that 'all the verbal acts of Mott, the insured, and also of the defendant, and all his acts as agent in procuring said insurance, were done in the city and county of San Francisco'. The court held that the whole transaction amounted to procuring insurance within the state of California by Hooper, residing there, and for a resident in the state from an insurance company not incorporated under its laws and which had not filed the bond required by the laws of the state relative to insurance; that Hooper, the defendant, acted as the agent of his principals in New York city, who were average adjusters and brokers there, and who had a place of business in San Francisco, and that Hooper, as such broker, having applied for the insurance to his principals in New York city, received the policy from them for delivery in San Francisco, and the premium was there paid.

"Upon the question as to the place where the contract was made, Mr. Justice White, speaking for the court, said: 'It is claimed, however, that, irrespective of this (commerce) clause, the conviction here was illegal, first, because the statute is by its terms invalid, in that it undertakes to forbid the procurement of a contract outside of the state; and, secondly, because the evidence shows that the contract was in fact entered into without the territory of California. The language of the statute is not fairly open to this construction. It punishes "every person who in this state procures or agrees to procure for a resident of this state any insurance," etc. The words "who in this state" cannot be read out of the law in order to nullify it under the Constitution.'

"In the case before us the contract was made beyond the territory of the state of Louisiana, and the only thing that the facts show was done within that state was the mailing of a letter of

notification, as above mentioned, which was done after the principal contract had been made.

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"The Supreme Court of Louisiana says that the act of writing, within that state, the letter of notification, was an act therein done to effect an insurance on property then in the state, in a marine insurance company which had not complied with its laws, and such act was therefore prohibited by the statute. As so construed we think the statute is a violation of the 14th Amendment of the Federal Constitution, in that it deprives the defendants of their liberty without due process of Law. The statute which forbids such act does not become due process of law, because it is inconsistent with the provisions of the Constitution of the Union. The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.

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"Has not a citizen of a state, under the provisions of the Federal Constitution above mentioned a right to contract outside of the state for insurance on his property—a right of which state legislation cannot deprive him? We are not alluding to acts done within the state by an insurance company or its agents doing business therein, which are in violation of the state statutes. Such acts

come within the principle of Hooper v. California, 155 U. S. 648, and would be controlled by it. When we speak of the liberty to contract for insurance or to do an act to effectuate such a contract already existing, we refer to and have in mind the facts of this case, where the contract was made outside the state, and as such was a valid and proper contract. The act done within the limits of the state under the circumstances of this case and for the purpose therein mentioned, we hold a proper act, one which the defendants were at liberty to perform and which the state legislature had no right to prevent, at least with reference to the Federal Constitution. To deprive the citizen of such a right as herein described without due process of law is illegal. Such a statute as this in question is not due process of law, because it prohibits an act which under the Federal Constitution the defendants had a right to perform. This does not interfere in any way with the acknowledged right of the state to enact such legislation in the legitimate exercise of its police or other powers as to it may seem proper. In the exercise of such right, however, care must be taken not to infringe upon those other rights of the citizen which are protected by the Federal Constitution.

"In the privilege of pursuing an ordinary calling or trade and of acquiring, holding, and selling property must be embraced the right to make all proper contracts in relation thereto, and although it may be conceded that this right to contract in relation to persons or property or to do business within the jurisdiction of the state may be regulated and sometimes prohibited when the contracts or business conflict with the policy of the state as contained in the statutes, yet the power does not and cannot extend to prohibiting the citizen from making contracts of the nature involved in this case outside of the limits and jurisdiction of the state, and which are also to be performed outside of such jurisdiction; nor can the state legally

prohibit its citizens from doing such an act as writing this letter of notification, even though the property which is the subject of the insurance may at the time when such insurance attaches be within the limits of the state. The mere fact that a citizen may be within the limits of a particular state does not prevent his making a contract outside its limits while he himself remains within it. Milliken v. Pratt, 125 Mass. 374 (28 Am. Rep. 241); Tildon v. Blair, 88 U. S. (21 Wall. 241). The contract in this case was thus made. It was a valid contract, made outside of the state, to be performed outside of the state, although the subject was property temporarily within the state. As the contract was valid in the place where made and where it was to be performed, the party to the contract upon whom is developed the right or duty to send the notification in order that the insurance provided for by the contract may attach to the property specified in the shipment mentioned in the notice, must have the liberty to do that act and to give that notification within the limits of the state, any prohibition of the state statute to the contrary notwithstanding. The giving of the notice is a mere collateral matter; it is not the contract itself, but is an act performed pursuant to a valid contract which the state had no right or jurisdiction to prevent its citizens from making outside the limits of the state.

"The Atlantic Mutual Insurance Company of New York has done no business of insurance within the state of Louisiana and has not subjected itself to any provisions of the statute in question. It had the right to enter into a contract in New York with citizens of Louisiana for the purpose of insuring the property of its citizens, even if that property were in the state of Louisiana and correlatively the citizens of Louisiana had the right without the state of entering into contract with an insurance company for the same purpose. Any act of the state legislature which should prevent the entering into such a contract, or the mail-

ing within the state of Louisiana of such a notification as is mentioned in this case, is an improper and illegal interference with the conduct of the citizen, although residing in Louisiana, in his right to contract and to carry out the terms of a contract validly entered into outside and beyond the jurisdiction of the state.

"In such a case as the facts here present the policy of the state in forbidding insurance companies which had not complied with the laws of the state from doing business within its limits cannot be so carried out as to prevent the citizen from writing such a letter of notification as was written by the plaintiffs in error in the state of Louisiana, when it is written pursuant to a valid contract made outside the state and with reference to a company which is not doing business within its limits.

"For these reasons we think the statute in question (La. Laws 1894, No. 66) was a violation of the Federal Constitution, and afforded no justification for the judgment awarded by that court against the plaintiffs in error. That judgment must therefore be reversed, and the case remanded to the supreme court of Louisiana for further proceedings not inconsistent with this opinion."

Allgeyer, et al. v. Louisiana, 165 U. S. 578.

We submit that the *Allgeyer* case, *supra,* is conclusive of the case at bar. No point can be made of the fact that this action is a civil one, whereas the *Allgeyer* case was a criminal action. (*St. Louis Cotton Compress Co. v. Arkansas, infra.*)

In this case the Agreed Statement of Facts discloses (R. 9):

(a) That it was *plaintiff's head office in Barcelona,* Spain, which entered into and carried the *open*

and running policies of insurance with the Guardian Assurance Co., of London, and with Le Comité Des Assurances Maritimes, of Paris.—Or, in other words, plaintiff had absolutely nothing to do with the creation or formation of the original open and running policies carried by Barcelona with the two aforementioned foreign insurance companies.

(b) That the *open and running* policies of insurance, carried by Barcelona with the two foreign insurance companies in this case, were entered into *outside* of the jurisdiction of the Philippine Islands, and with which plaintiff had no connection whatsoever.

(c) That plaintiff herein was "covered" by Barcelona under its aforesaid open and running policies, only *after* Barcelona had obtained the blanket open and running policies and only *after* it had been advised by plaintiff, by cable of the amount of goods on deposit, or being shipped abroad by plaintiff.

(d) That all acts done by plaintiff in this case, such as cabling Barcelona, were done *after* Barcelona had already secured the principal contracts of insurance—the open and running policies—from the foreign insurance companies.

(e) That the purpose of plaintiff's cables to Barcelona was merely to fix the measure of damage, under the open policies already being carried by Barcelona, in the event of loss, and formed no

part in *creating* a contract of insurance within the Philippine Islands.

Our Insurance Act (Act No. 2427) defines "open" and "running" policies as follows:

> Sec. 57. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.
>
> Sec. 59. A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

In the *Allgeyer* case, *supra,* in order to fix the value of each consignment of cotton, under the open policy of insurance carried with the Atlantic Mutual Insurance Company, it was necessary for Allgeyer and his associates to advise the Insurance Company, in writing or by telegraph, of the value, etc., of each shipment.

In this case plaintiff has done that, and nothing more.

(b) Statutes Taxing Such Contracts.

The principles of law laid down in the *Allgeyer* case, *supra,* have been re-affirmed by the Supreme Court of the United States in the very recent case of *St. Louis Cotton Compress Co. v. State of Arkansas,* 260 U. S. 346, 67 L. Ed. 297. In this case the State of Arkansas attempted to collect a tax from defendant St. Louis Cotton Compress Co., a Missouri corporation authorized and licensed to do business in the State

of Arkansas, under a statute purporting to impose a tax of 5% of the gross premiums paid for insurance upon its property, in Arkansas, with foreign insurance companies not licensed to do business in Arkansas. Mr. Justice Holmes, speaking for the court said:

> "This is a suit by the state of Arkansas against a corporation of Missouri authorized to do business in Arkansas. It is brought to recover 5 per cent on the gross premiums paid by the defendant, the plaintiff in error, for insurance upon its property in Arkansas, to companies not authorized to do business in the state. A statute of the state purports to impose a liability for this amount as a tax. Crawford & M. Dig. (1921) Sec. 9967. The answer alleged that the policies were contracted for, delivered, and paid for in St. Louis, Missouri, the domicil of the corporation, because the rates were less than those charged by companies authorized to do business in Arkansas. It also alleged that long before the taxing act was passed the defendant had made large investments in Arkansas in real and personal property essential to the conduct of its business, which it had held and operated ever since. The plaintiff demurred. The lower court overruled the demurrer, but the supreme court sustained it, holding that the statute denied to the defendant no rights guaranteed to it by the 14th Amendment. Judgment was entered for the plaintiff, and the case was brought by writ of error to this court.
>
> "The supreme court justified the imposition as an occupation tax,—that is, as we understand it, a tax upon the occupation of the defendant. But this court, although bound by the construction that the supreme court may put upon the statute, is not bound by the characterization of it, so far as that characterization may bear upon the question of its constitutional effect. St. Louis Southwestern R. Co. v. Arkansas, 235 U. S. 350, 362,

59 L. Ed. 265, 271, 35 Sup. Ct. Rep. 99. The short question is whether this so-called tax is saved because of the name given to it by the statute, when it has been decided in Allgeyer v. Louisiana, 165 U. S. 578, 41 L. Ed. 832, 17 Sup. Ct. Rep. 427, that the imposition of a round sum, called a fine, for doing the same thing, called an offense, is invalid under the 14th Amendment. It is argued that there is a distinction because the Louisiana statute prohibits (by implication) what this statute permits. But that distinction, apart from some relatively insignificant collateral consequences, is merely in the amount of the detriment imposed upon doing the act. The name given by the state to the imposition is not conclusive. Bailey v. Drexel Furniture Co., 259 U. S. 20, 66 L. Ed. 817, 21 A. L. R. 1432, 42 Sup. Ct. Rep. 449; Lipke v. Lederer, 259 U. S. 557, 66 L. Ed. 1061, 42 Sup. Ct. Rep. 549. In Louisiana the detriment was $1,000. Here it is 5 per cent upon the premiums—which is 3 per cent more than is charged for insuring in authorized companies. Each is a prohibition to the extent of the payment required. The Arkansas tax manifests no less plainly than the Louisiana fine a purpose to discourage insuring in companies that do not pay tribute to the state. This case is stronger than that of Allgeyer in that here no act was done within the state, whereas there a letter constituting a step in the contract was posted within the jurisdiction. It is true that the state may regulate the activities of foreign corporations within the state, but it cannot regulate or interfere with what they do outside. The other limit upon the state's power, due to its having permitted the plaintiff in error to establish itself as alleged, need not be considered here. Southern R. Co. v. Greene, 216 U. S. 300, 414, 54 L. Ed. 536, 540, 30 Sup. Ct. Rep. 287, 17 Ann. Cas. 1247; Cheney Bros. Co. v. Massachusetts, 246 U. S. 147, 157, 62 L. Ed. 632, 638, 38 Sup. Ct. Rep. 295; Northwestern Mut. L. Ins. Co.

v. Wisconsin, 247 U. S. 132, 140, 62 L. Ed. 1025, 1037, 38 Sup. Ct. Rep. 444."

St. Louis Cotton Compress Co. v. Arkansas, 260 U. S. 346.

The *Allgeyer* case *supra,* has been followed consistently, as may be seen in the following cases:

Provident Sav. L. Assur. Society v. Kentucky, 239 U. S. 103, 60 L. Ed. 167;

New York Life Insurance Company v. Dodge, 246 U. S. 357, 62 L. Ed. 772.

The majority of the Court below holds (R. 39) that there is a very marked distinction between the Louisiana Statute and the one now under consideration, that under the Louisiana Statute it was made a crime for any person in Louisiana to insure his property in that state in an insurance company which had not complied in all respects with the laws thereof, while the law in question here recognizes his right to do so. "But it (the statute) says to all persons, if you insure your property in the Philippines in a foreign insurance company, which is not authorized to do business here, you must pay the Government the 1% tax on the premium which it would have received if the property had been insured through an agent of a company authorized to do business in the Philippine Islands." (R. 39.)

The answer to this is that it is an attempt to exact from foreign insurance companies indirectly, and through an arbitrary and unjust imposition upon those who deal with them, a tax which it is not only beyond the physical power of the Philippines to extract from

such companies, but which it is not within their right to impose. (37 *Cyc.* 718; *State Tax on Foreign-Held Bonds,* 15 Wall. 300.) The so-called tax is in effect nothing more or less than a fine imposed with intent to compel foreign companies to enter the Islands and submit themselves to the taxing power.

Moreover, the tax in question is not an occupation tax, for petitioner is not engaged in the business of an insurer.

Nor can it be upheld as a charge upon the exercise of a right or franchise granted by the Philippine Islands, for the right would exist even if forbidden by the statute, (*Allgeyer v. State of Louisiana,* 165 U. S. 578), and, therefore, flows, not from the local sovereignty, but from the Constitution.

Third Assignment of Error.

The Lower Court Erred in Not Holding That the Cables Sent by Plaintiff to its Head Office in Barcelona (Advising Barcelona of the Value of Goods on Deposit or Being Shipped by Plaintiff From These Islands) Were Collateral and Subsequent to the Creation of the Principal Contracts of Foreign Insurance.

Some importance seems to have been attached by both the trial Court and the Supreme Court of the Philippines to the question whether the negotiations for the coverage of the various lots of merchandise involved in this case under the open and running contracts obtained abroad were initiated by petitioner's branch office in Manila or its head office in Barcelona. (R. 24-40.) The writer is unable to see that the point

is of especial importance, believing that it has been disposed of in the *Allgeyer* case in discussing the right of the citizen to make contracts abroad.

> "The mere fact that a citizen may be within the limits of a particular state does not prevent his making a contract outside its limits while he himself remains within it." (*Supra,* p. 38.)

Not only were the open and running contracts in the present case made in Europe, but there is nothing in the record to indicate that the Manila office was concerned in any way in the negotiations.

The error into which the lower Court fell on this point occurs from a clear misunderstanding of the purpose for which plaintiff's cables (notifying Barcelona of the value of merchandise on deposit or being shipped abroad from the Philippine Islands) were sent.

We believe the agreed statement of facts in this case shows these things very plainly (R. 9):

> 1. That, at the time plaintiff's cables were sent to Barcelona, Barcelona then had and was already carrying open and running policies of insurance with the Guardian Assurance Co., of London, and with Le Comité Des Assurances, of Paris.
>
> 2. That Barcelona had effected those principal policies of insurance wholly independently of plaintiff, and without plaintiff's intervention therein.
>
> 3. That, after receipt of plaintiff's cable notifications, Barcelona merely "covered" plaintiff under its (Barcelona's) already existing open and running policies of insurance.

The nature of these policies has already been shown. (*Supra,* p. 41.)

True it is that the stipulation as to the facts, after stating that subsequent to the purchase of the merchandise the plaintiff did from time to time, ship said goods abroad, and did by cable notify its head office in Barcelona of the value of such shipments (R. 14-VI), continues *"That plaintiff's head office in Barcelona thereupon insured said shipments of goods, for and on behalf of plaintiff,* against marine risks, *under open and running policies of insurance carried by it* with" a French Company (R. 14-VII), and (VIII) charged the expense of said premiums to plaintiff's account.

We must admit some lack of precision in the language of this stipulation for which the learned Attorney General of the Philippines will, no doubt, gracefully accept his share of the responsibility. The portion of the stipulation here under consideration involves the legally incongruous idea of a corporation with two separate entities one in the Philippines, the other in Spain, one notifying the other of shipments, the other insuring the goods for and on behalf of the former.

What the stipulation obviously means is that the plaintiff's Manila office notified its head office at Barcelona of the shipments, that the Barcelona office thereupon did whatever was necessary under the terms of the pre-existing open and running policies of insurance to place the merchandise shipped within the protection of those policies, and (as an ordinary matter of bookkeeping necessary to keep track of the profits of its business in the Philippines) charged its Manila branch with the expense.

As said in the *Allgeyer* case (*supra*, p. 38):

> "The giving of the notice is a mere collateral matter; it is not the contract itself, but is an act performed pursuant to a valid contract which the state had no right or jurisdiction to prevent its citizens from making outside the limits of the State."

Had the lower Court clearly appreciated that under open and running policies of insurance it is necessary for the insured to notify the insurance companies of the various shipments of goods being made from time to time, under marine contracts, in order to fix the measure of damage or loss—as to any particular shipment—and the same in respect of deposits of goods from time to time, under open and running policies of insurance against fire—in our opinion its decision must have been in strict accord with the foregoing decisions of the Supreme Court of the United States.

And while it may well be that the Philippine Government has a right to raise money by any lawful kind of tax, yet there are fundamental and inalienable rights which must be safeguarded and saved to the humblest citizen of each and every state, one of these being his right not to be deprived of life, liberty or property without due process of law.

> "* * * Great as is the taxing power, it can never rise superior to the inalienable rights guaranteed by our Constitution. * * *"
>
> *Fiscal Court v. F. & A. Cox Co.*, 132 Ky. 738; 21 L. R. A. (N. S.) 83, 85.

We, therefore, respectfully submit that the lower Court erred in holding that the cable notices sent by

petitioner's Manila office to Barcelona were prior to the consummation of the insurance contracts and constituted a step in the making of said contracts.

For all of these reasons the judgment of the lower Court should be reversed and one should be entered herein in favor of plaintiff for the recovery of P48.32 on its first cause of action, and for P1,000.50 on its second cause of action, a total of P1,048.82 and for costs.

Dated, San Francisco,
March 29, 1926.

Respectfully submitted,
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(APPENDIX FOLLOWS.)

Appendix

PHILIPPINE STATUTES.

Act No. 2339. An act revising and consolidating the laws relative to internal revenue. Enacted February 27, 1914.

Sec. 79. Tax on insurance premiums. There shall be collected from every person, company, or corporation (except purely cooperative companies or associations) doing insurance business of any sort in the Philippine Islands a tax of one per cent. of the total premiums collected during each calendar year, whether paid in money, notes, credits, or any substitute for money, but premiums refunded within six months after payment on account of rejection of risk or returned for other reason to persons insured shall not be included in the taxable receipts; nor shall any tax be paid upon reinsurance by a company that has already paid the tax.

Act No. 2427. An act revising the insurance laws and liquidating insurance business in the Philippine Islands. Enacted Dec. 11, 1914.

Sec. 57. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

Sec. 59. A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined,

especially as to the subjects of insurance, by additional statements or indorsements.

Sec. 192 (Amended by Act No. 2430, *infra*).

Act No. 2430, amending Section 192 of Act No. 2427, *supra*. Enacted Dec. 15, 1914.

"Sec. 192. It shall be unlawful for any person, company or corporation in the Philippine Islands either to procure, receive, or forward applications for insurance in or to issue or to deliver or accept policies of or for any company or companies not having been legally authorized to transact business in the Philippine Islands, as provided in this chapter; any such person, company, or corporation violating the provisions of this section shall be deemed guilty of a penal offense, and, upon conviction thereof, shall for each such offense, be punished by a fine of two hundred pesos, or imprisonment for two months, or both in the discretion of the Court: Provided, That insurance in companies not authorized to transact business in the Philippine Islands may be placed upon terms and conditions as follows:

"The Insurance Commissioner may issue a certificate of authority to any regularly authorized fire or marine insurance agent of the Philippine Islands, subject to revocation at any time, permitting the person named therein to procure policies of insurance on risks located in the Philippine Islands for companies not authorized to transact business in the Philippine Islands.

"Before the agent named in such certificate of authority shall procure any insurance in such company there shall be executed and filed in each case with the Insurance Commissioner by the agent and by the party desiring the insurance affidavits setting forth that the party desiring insurance is after diligent effort unable to procure, in any of the companies authorized to do business in the Philippine Islands, the amount of insurance necessary.

"Every such agent shall keep a separate account of the business done under the authority of this section, open at all times to the inspection of any authorized Government officer, showing the exact amount and character of such insurance placed for any person, firm, or corporation, the gross premiums charged thereon, the companies with which the same is placed, the dates of the policies, the terms thereof, and the location of the insured property.

"Such agent shall likewise make a yearly report to the Collector of Internal Revenue at the time and in the manner prescribed in section eighty-one of Act Numbered Twenty-three hundred and thirty-nine, showing the entire amount of all premiums received by the company he represents under the authority of this section. And such agent shall pay to the Collector of Internal Revenue a tax equal to twice the tax imposed by section seventy-nine of Act Numbered Twenty-three hundred and thirty-nine, which tax shall be paid at the same time and be subject to the same penalty for delinquency as the tax imposed by said Act Numbered Twenty-three hundred and thirty-nine: Provided, however, That the provisions of this section

shall not apply to reinsurance: *And provided further,* that the prohibitions of this section shall not affect the right of an owner of property to apply for and obtain for himself policies in foreign companies in cases where said owner does not make use of the services of any agent, company or corporation residing or doing business in the Philippine Islands. In all cases where owners of property obtain insurance directly with foreign companies, it shall be the duty of said owners to report to the Insurance Commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so."

ACTS OF CONGRESS.

Act of July 1, 1902, c. 1369, 32 Stat. L. 691.

Section 5. (Declaration of rights.) That no law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws.

* * * * * * *

That the rule of taxation in said Islands shall be uniform.

Act of Aug. 29, 1916, c. 416.

Section 3. Bill of Rights and Restrictions for Philippine Islands.

No law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws. Private property shall not be taken for public use without just compensation.

* * * * * * *

That the rule of taxation in said Islands shall be uniform.

In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 42

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS,
Petitioner,

vs.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

BRIEF FOR RESPONDENT

ON WRIT OF FOREIGN INSURANCE.

WILLIAM STEPHENS SHARP,
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In the Supreme Court of the United States

TO THE OCTOBER TERM, 1927.

No. 42

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS,
Petitioner,

v.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

BRIEF FOR RESPONDENT

TAX ON FOREIGN INSURANCE

OPINIONS BELOW.

The opinion of the Court of First Instance of Manila, October 15, 1924 (HARVEY, J.), is not officially reported. It appears on pages 11 to 27 of the printed transcript of the record.

The opinion of the Supreme Court of the Philippine Islands, September 26, 1925, is not yet officially reported. It appears on pages 29 to 43 of the record. The dissenting opinion of Justices Johnson and Street is on pages 43 to 45.

JURISDICTION.

This court, May 3, 1926, granted the writ of certiorari to the petitioner, Compañía General de Tabacos de Filipinas, plaintiff in the original action in the Court of First Instance and appellant in the Insular Supreme Court (271 U. S. 655).

48 PR Rep 35

THE QUESTIONS.

1. Is this a tax, of a kind within the power of the Philippine Government to lay and collect;—that is to say, was it within the power of the Philippine Government to tax the plaintiff, in the Philippine Islands, on the amount of the insurance premiums paid in London and Paris?

2. Is this tax violative of the first paragraph of Section 3 of the Jones Law, as denying to the plaintiff liberty or property without due process of law, or as denying to it equal protection of the laws, because unduly discriminative against insuring with foreign insurance companies?

3. Is this tax violative of the provision of the Jones Law that "The rule of taxation in said islands shall be uniform"?

STATUTES INVOLVED.

The statutes involved are printed in the "Appendix" to plaintiff-petitioner's brief in support of its petition for certiorari. The essential provisions are:

PHILIPPINE STATUTES.

Act No. 2339.—Sec. 79.—"*Tax on insurance premiums.*—There shall be collected from every person, company or corporation (except purely cooperative companies or associations) doing insurance business of any sort in the Philippine Islands a tax of one per cent of the total premiums collected during each calendar year, whether paid in money, notes, credits, or any substitute for money, * * *."

Act No. 2427.—Sec. 57.—"An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss."

Act No. 2427.—Sec. 59.—"A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements."

Act No. 2427.—Sec. 192, as amended by Act No. 2430, Dec. 15, 1914.—"It shall be unlawful for any person, company or corporation in the Philippine Islands either to procure, receive, or forward applications for insurance in or to issue or to deliver or accept policies of or for any company or companies not having been legally authorized to transact business in the Philippine Islands, as provided in this chapter; * * * *: *And provided further*, That the prohibitions of this section shall not affect the right of

an owner of property to apply for and obtain for himself policies in foreign companies in cases where said owner does not make use of the services of any agent, company or corporation, residing or doing business in the Philippine Islands. In all cases where owners of property obtain insurance directly with foreign companies, it shall be the duty of said owners to report to the Insurance Commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so."

UNITED STATES STATUTES.

Organic Act of the Philippine Islands, "Jones Law," Act of August 29, 1916, ch. 416, 39 Stat. 545.—Sec. 3, Declaration of rights.—

"Sec. 3. That no law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the law" (39 Stat. 546).

"That the rule of taxation in said islands shall be uniform" (39 Stat. 547).

STATEMENT OF THE CASE.

The case is stated in the stipulated "Agreed Statement of Facts" (R. 8-10) with the supplemental "Stipulation" (R. 11) submitted to the Court of First Instance. This "Agreed Statement of Facts" is copied into the opinion of the Court of First Instance (R. 12–15), and again into the opinion of the Insular Supreme Court (R. 30–33).

The gist of it is that the plaintiff-petitioner is a Spanish corporation licensed to do business in the Philippines and maintaining "its principal office in the said islands" in Manila; that through its head office in Barcelona, Spain, it placed "open and running policies" of fire insurance with the Guardian Assurance Company of London, England, on which it paid premiums in London, and of marine insurance with Le Comité des Assurances Maritimes de Paris, of Paris, France, on which it paid premiums in Paris, all "without the use of the services or intervention of any agent, company, corporation or other representative of the aforesaid two foreign insurance companies, residing or doing business in the Philippine Islands,"

and that the insurance companies would have paid the amounts of any losses "to plaintiff's head office in London, and/or Paris, as the case might be, for plaintiff's account"; that during the year 1922 plaintiff purchased and deposited in its warehouses in the Philippine Islands certain merchandise, and from time to time by cable notified its head office in Barcelona, Spain, of the value thereof, and that the head office in Barcelona, "thereupon insured said goods, wares and merchandise, for and on behalf of plaintiff, against fire," under such open and running policies of insurance carried with the Guardian Assurance Company of London, and paid the premiums thereon in London; that, subsequently to the purchase of such goods, plaintiff "did, from time to time during the year 1922, ship said goods abroad, for sale, and did, by cable, at the time of making said shipments, notify its head office in Barcelona, Spain, of the value of said shipments," and that plaintiff's head office in Barcelona "thereupon insured said shipments of goods, for and on behalf of plaintiff, against marine risks," under such open and running policies of insurance carried with Le Comité des Assurances Maritimes de Paris, and paid the premiums thereon in Paris; that both the Guardian Assurance Company of London and Le Comité des Assurances Maritimes de Paris are foreign corporations, the former being licensed to do business in the Philippine Islands and having an agent or agents in the Islands, but the latter not licensed to do business in the Philippine Islands and having no agent therein. That on or about June 25, 1923, defendent-respondent, Insular Collector of Internal Revenue, acting under Section 192 of Act No. 2427 of the Philippine Legislature, as amended by Act No. 2430, levied against plaintiff in the Philippine Islands a tax of one per cent. of the amount of the premiums so paid by it to the Guardian Assurance Company in London and to Le Comité des Assurances Maritimes de Paris in Paris; that plaintiff paid the tax under protest, and thereupon filed this action for the refund thereof.

Plaintiff's contentions are, as stated in its assignment of errors in the Insular Supreme Court (R. 28–29 and 33–34), and in its brief here in support of its petition for certiorari (Petitioner's brief, pp. 17–18), that the Insular Courts erred:—

(1) In not declaring Section 192 of Philippine Act No. 2427, as amended by Act No. 2430, "void, unconstitutional and violative of Section 3 of the Jones Law—Act of Congress of August 29, 1916—which provides that the rule of taxation in the Philippine Islands shall be uniform"; (2) in not declaring such Section 192 of Act No. 2427, as amended by Act No. 2430, void as violative of the provision of Section 3 of the Jones Law that "no law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty or property without due process of law"; and (3) "in not holding that the cables sent by plaintiff to its head office in Barcelona (advising Barcelona of the value of goods on deposit or being shipped by plaintiff from these Islands) were collateral and subsequent to the creation of the principal contracts of foreign insurance." And plaintiff-petitioner further says in its "Argument" in its brief here (Petitioner's brief, "Argument," p. 18) that

> "The underlying question at the very heart of this controversy is whether the exaction imposed upon the owners of insurance obtained abroad is a tax at all."

RESPONDENT'S POSITION.

Respondent's position is that the tax is valid; and, therefore, that the judgment of the Supreme Court of the Philippine Islands should be affirmed; because:

1. This tax is of a kind within the taxing power of the local government,—the Government of the Philippine Islands.

2. It is not unduly discriminatory against persons insuring with foreign insurance companies, since it levies against them only the same tax of one per cent. of the premiums paid which is levied upon premiums paid on insurance effected in the Philippine Islands. It is immaterial that the insurer, if insuring directly in a foreign company, pays the tax directly to the government, whereas he pays it through the medium of the insurance agent if the insurance is effected in the Philippine Islands,—the amount being precisely the same, viz. one per cent. of the premiums paid, in either case.

3. This tax does not violate the rule of uniformity in taxation,—that is to say, the requirement of the Jones Law that the rule of taxation in the islands shall be uniform.

ARGUMENT

POINT I.

This tax is of a kind within the taxing power of the local government,—the Government of the Philippine Islands.

This is believed to be settled by the recent decision of this court in the Palmetto Insurance Company case.

> *Palmetto Ins. Co.* vs. *Conn*, 272 U.S. 295, 304–305 (HOLMES, J., Oct. 25, 1926).

In that case the facts, as stated in the opinion of this court, were:

> "The plaintiff made a contract of insurance in Michigan with the Chrysler Sales Corporation, a Michigan Corporation which sells all the automobiles made by the Chrysler Corporation. This contract purported to insure purchasers of Chrysler cars against fire and theft, and to become automatically effective from the date on which the purchaser took delivery or a bill of sale of the car; the Chrysler Company to send a monthly report to the plaintiff for all cars for which insurance was thus provided and to pay premiums accordingly at Detroit. If anyone bought a car he got the insurance whether he wished it or not as part of his bargain, and a certificate was sent to him by the plaintiff. The question is whether this transaction brought the plaintiff within the taxing power of Ohio." (272 U. S., *supra*, at p. 304.)

Upon these facts this court held that upon a purchase of a Chrysler car by a purchaser in Ohio,—or in Wisconsin or in Maine,—the insurance thereupon coming into effect in the purchaser's favor under the Michigan contract between the Chrysler Corporation and the insurance company constituted insurance effected within the State where the car was purchased and consequently subject to the laws of that State; saying:

> "Whatever technical form may be given to the reasoning, the substance is that by acts done in Ohio the purchaser obtains for himself the advantage of insurance that before that moment did not exist. It does not matter whether his getting it was a large or an inconspicuous feature of his bargain. It was part of it in any event, and

we cannot doubt that the lower court was right in holding that in such circumstances the State could insist upon its right to tax." (272 U.S., *supra*, at p. 305.)

The facts in the case here at bar are strictly analogous. Here, as in the *Palmetto* case, the general open and running contracts of insurance were made outside of the jurisdiction of the Government levying the tax but were brought into effect afterwards as to particular property situated within the jurisdiction by the acts of persons resident within the jurisdiction and subject to the local government's (the Philippine Government's) power to tax,—viz. by the acts of the plaintiff's Philippine branch office in purchasing and storing the tobacco and advising the London insurance company (through plaintiff's head office in Barcelona) of that fact, thereby bringing the fire insurance into effect; and in thereafter loading it on to vessels for water shipment, and advising the Paris company (through plaintiff's Barcelona office), thereby bringing the maritime insurance into effect. If there be any difference whatever, in principle, between this case and the *Palmetto* case, then this presents a stronger case in favor of the local government's power to tax than did the *Palmetto* case; since, here, the persons subject to the local jurisdiction in the Philippine Islands who performed the specific acts of purchase and storage and shipment of the property and the cabling of advices of those facts, to bring the fire and marine insurance policies respectively into effect as to the particular property, were themselves a part of the plaintiff corporation, viz., its branch office in Manila, whose acts were as much those of the plaintiff itself as were the acts of its head office in Barcelona in making the original insurance contracts and paying the premiums thereon. If, on the other hand, plaintiff's branch office in Manila is to be treated (as seems to be the idea underlying petitioner's argument here) as a separate identity from the head office in Barcelona, then this case becomes exactly the same in principle,—on all fours,—with the *Palmetto* case where the acts of third persons within the local jurisdiction (viz., in the case at bar, of plaintiff's local office in Manila), bringing the insurance into effect to cover specific property located within the jurisdiction, were held so to effect the

insurance within that jurisdiction "that in such circumstances the State" (the Philippine Government) "could insist upon its right to tax."

POINT II.

This tax is not unduly discriminatory against persons insuring with foreign insurance companies, since it levies against them only the same tax of one per cent. of the premiums paid which is levied upon premiums paid on insurance effected in the Philippine Islands.

It is immaterial that the insurer, if insuring directly in a foreign company, pays the tax directly to the Government; whereas he pays it through the medium of the insurance agent if the insurance is effected in the Philippine Islands,—the amount being precisely the same, viz. one per cent. of the premiums paid, in either case.

If the insurance is effected in the Philippine Islands, or through any person, company or corporation (except purely cooperative companies or associations) doing insurance business of any sort in those Islands, then a tax of one per cent. of the total premiums collected during each calendar year is levied, payable by the insurance company or insurance agent—Sec. 79, Philippine Act No. 2339, *ante*, p. 2, "Statutes Involved," and "Appendix," p. 1, to Petitioner's Brief.

If the insurer chooses (as the plaintiff in the case at bar) to obtain his insurance directly from a foreign company without making use of the services of any agent or corporation residing or doing business in the Philippine Islands, then he himself pays the tax at precisely the same rate of one per centum on the premiums paid.

> Sec. 192, Act No. 2427, as amended by Act No. 2430, Dec. 15, 1914, *ante*, pp. 2–3; and "Appendix" to Petitioner's brief, pp. II–IV.

A. *The cases relied upon by petitioner* (*Allgeyer* v. *Louisiana*, 165 U. S. 578; *St. Louis Cotton Compress Co.* v. *Arkansas*, 260 U. S. 346; *Re Page*, 60 Kansas, 842, 58 Pac. 478, 47 L. R. A., 68) are not to the contrary; and are not here in point. They *are all cases of actual, serious, intended discrimination* (or prohibition) *against insuring in foreign companies.*

B. For example, the *Allgeyer* case involved a Louisiana statute absolutely prohibiting such insurance and attempting to make it a criminal offense. (*Allgeyer* v. *Louisiana, supra,* 165 U. S. 578, 579, 589–593; Act No. 66, Acts of Louisiana, for the year 1894). Whereas, on the contrary, the Philippine statute here in question (Sec. 192, Philippine Act No. 2427, as amended by Act No. 2430, Dec. 15, 1914, *supra*) by its final *proviso* (*ante*, pp. 2–3), under which this tax was levied, expressly recognizes the "right of an owner of property to apply for and obtain for himself policies in foreign companies";—only requiring him to pay the same one per cent. tax on the premiums that he would pay through the insurance agent if the insurance were effected in the Philippine Islands.

In the *Allgeyer* case this court expressly said:

> "but we do not intend to hold that in no such case can the State exercise its police power. When and how far such power may be legitimately exercised with regard to these subjects must be left for determination to each case as it arises.
>
> "* * * This does not interfere in any way with the acknowledged right of the State to enact such legislation in the legitimate exercise of its police *or other powers* as to it may seem proper. In the exercise of such right, however, care must be taken not to infringe upon those other rights of the citizen which are protected by the Federal Constitution." (*italics ours.*)

Allgeyer v. *Louisiana, supra,* 165 U. S. 578, 590, 591.

Among such "other powers" is the power to tax.

There is nothing in the *Allgeyer* case inhibiting or limiting the power of the State to tax such insurance contracts as property (without discrimination against them because of their foreign character) in the same way that it taxes domestic insurance contracts. Like domestic contracts, they are property, and are subject to the local government's inherent power to tax.

C. Petitioner's other cases (the *St. Louis Compress Co.* case, and the *Page* case in the Kansas Supreme Court, *supra*) are both cases of deliberate legislative attempts at indirect prohibition of foreign insurance by levying highly discriminatory taxes against it.

In the Kansas case (*Re Page, supra*) a ten per cent. tax was attempted to be levied against such insurance; whereas no tax whatever was levied upon insurance effected within the State, either against the insurer, the insurance agent, or the insured (Kansas Laws of 1899, Ch. 249). The Supreme Court of Kansas, in holding the statute invalid and the tax illegal, said:

> "The lack of uniformity is manifest in another way: One taxpayer has a policy written in the state by a company with authority, upon which no tax is imposed, while his neighbor has one written by an unlicensed company at Indianapolis, or other place outside of the state, which is subject to taxation. Taxes are uniform and equal when imposed upon all property of the same character within the taxing district, and yet here the insured pays a 10 per cent. tax upon a policy written outside of the state, while his neighbor pays nothing upon a policy of equal value, and affording the same protection, because it is written within the state. * * * * This is an invidious discrimination, purposely made, and is a distinct departure from the constitutional rule of uniformity."
>
> *Re Page, supra*, 60 Kans. 842; 58 Pac. 478, 480; 47 L. R. A. 68, 70.

And in the *St. Louis Cotton Compress Co.* case, the Arkansas statute condemned by this court sought to levy a five per cent. tax on such foreign insurance; which, as this court noted in its opinion in that case, was "three per cent. more than is charged for insuring in authorized companies" within the State. In that case this court, following the *Allgeyer* case, said:

> "The Arkansas tax manifests no less plainly than the Louisiana fine a purpose to discourage insuring in companies that do not pay tribute to the State."
>
> *St. Louis Compress Co.* v. *Arkansas, supra*, 260 U. S. 346, 347, 348–349 (HOLMES, J., Dec. 4, 1922).

D. No such purpose is manifested by this Philippine statute. There is here no discrimination against foreign insurance. As was well said by the Insular Supreme Court in its opinion in this case (R. 37–38, 40, 42):—

> "As to the law here in question, we have this situation. The Government receives 1% of all premiums collected on domestic insurance, which is paid by the insurance

companies, and where the insurance is made in a foreign company without the services of an agent by a person here on property here, the provision above quoted requires that the insured 'shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies.' That it to say, in one case, the 1% tax is paid by the insurance company, and, in the other, it is paid by the insured. But, as a matter of fact, in both cases, it is paid by the insured. In actual practice, the amount of any tax paid on the premiums collected by the insurance company is added to, and becomes a part of, the premium itself and, in the final analysis, is paid by the insured. If, as a matter of fact, the 1% tax is collected on premiums on domestic insurance and is not collected on premiums paid on foreign insurance, you would then have an 'invidious discrimination' against domestic insurance." (R. 37–38.) * * * *

"To hold the law unconstitutional would in effect amount to a discrimination in favor of a foreign insurance company which is not authorized to do business in the Philippine Islands and against insurance companies that are authorized to do business here." (R. 40.) * * * *

"In legal effect there is no prohibition against a person doing business in the Philippine Islands insuring property here with an insurance company, which is not authorized to do business here. The Government says that you can insure your property in either a foreign or domestic insurance company, but if you insure it in a foreign insurance company, then you must pay the 1% tax which an insurance company authorized to do business in the Philippine Islands is required to pay to the Government, and the whole matter is left entirely to the discretion of the insured. That is not discrimination. Neither does it 'deprive any person of life, liberty, or property, without due process of law,' and, in actual practice, 'the rule of taxation is uniform,' and the law in question is alike as to any and all persons similarly situated. To hold otherwise would be to require a domestic insurance corporation to pay a tax of 1% on its premiums collected, and to permit a person having property here to insure it in a foreign corporation not authorized to do business in the Philippines, and to avoid payment of the 1% tax. The law in question was enacted to prevent the doing of that very thing." (R. 42.)

POINT III.

This tax does not violate the rule of uniformity in taxation,—that is to say, the requirement of the Jones Law that "the rule of taxation in said islands shall be uniform."

The only contention made in support of the claim of supposed lack of uniformity is that (petitioner's brief, pp. 26–28), whereas in case of insurance effected within the Philippine Islands the 1% tax is paid by the insurance agent, it must be paid by the owner in case he insures directly with the foreign company. But the tax is the same in either event. The circumstance that in the one case it is paid through the insurance agent, whereas in the other it is paid directly by the owner, does not affect the uniformity of the rule of taxation. Uniformity is not tantamount to universality, and does not prevent reasonable classification of the objects or methods of taxation.

It is believed to be the settled rule of this court that "uniformity" does not require absolute *equality* of taxation under all circumstances; is not tantamount to "universality"; and does not prevent reasonable classification of either the property or the persons to be taxed, or of the methods of collection of the taxes.

Louisiana v. *Pilsbury*, 105 U. S. 278, 296.
Bell's Gap R. Co. v. *Pennsylvania*, 134 U. S. 232, 237–238.
Home Ins. Co. v. *New York*, 134 U. S. 594, 606.
Pac. Exp. Co. v. *Seibert*, 142 U. S. 339, 350–352.
Giozza v. *Tiernan*, 148 U. S. 657, 662.
Watson v. *State Comptroller*, 254 U. S. 122, 124–125.
Stebbins v. *Riley*, 268 U. S. 137, 141–143.

> "This court has repeatedly laid down the doctrine that diversity of taxation, both with respect to the amount imposed and the various species of property selected either for bearing its burdens or for being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms; and that a system which imposes the same tax upon every species of property, irrespective of its nature or condition or class, will be destructive of the principle of uniformity

and equality in taxation and of a just adaptation of property to its burdens."

Pac. Exp. Co. v. *Seibert, supra,* 142 U. S. 339, 351 (LAMAR, J.).

The provision in Section 3 of the Jones Law, the Organic Act of the Philippines, "That the rule of taxation in said islands shall be uniform" (39 Stat. 547) is only a paraphrase of the provision of the 14th Amendment securing to every person "the equal protection of the laws."

As applied to taxation, that constitutional provision has been said by this court to mean

> "That no greater burdens should be laid upon one than are laid upon others in the same calling and condition."
>
> *Bell's Gap R. Co.* v. *Pennsylvania, supra,* 134 U. S. 232, 238 (BRADLEY, J.), quoting with approval,
>
> *Barbier* v. *Connolly,* 113 U. S. 27, 31 (FIELD, J.).

Confer, also

> *Pac. Express Co.* v. *Seibert, supra,* 142 U. S. 339, 342–3, 350–51.

This tax lays no greater burden upon foreign than on domestic insurance.

CONCLUSION.

It is respectfully submitted that the judgment of the Supreme Court of the Philippine Islands, affirming that of the Court of First Instance of Manila, was right and should be affirmed.

WILLIAM CATTRON RIGBY,
Lieutenant Colonel, Judge Advocate,
Attorney for Respondent.

A. R. STALLINGS,
Lieutenant Colonel, Judge Advocate,

DELFIN JARANILLA,
Attorney General of the Philippine Islands,
Of Counsel.

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IN THE

Supreme Court of the United States

TO THE OCTOBER TERM, 1927.

No. 42.

COMPANIA GENERAL DE TABACOS DE FILIPINAS,
Petitioner,

v.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

REPLY BRIEF FOR PETITIONER.

TAX ON FOREIGN INSURANCE.

Respondent's position, as stated in his brief, is:

1. That the statute under which the tax or charge complained of was exacted was within the taxing power of the Philippine Government.

2. That the statute and the charge imposed thereunder do not violate the requirement of the "Jones Law" (Organic Act of the Philippine Islands), that the rule of taxation in the islands shall be uniform.

3. "It is not unduly discriminatory against persons insuring with foreign companies since it levies

against them only the same tax of one per cent of the premiums paid which is levied upon premiums paid on insurance effected in the Philippine Islands." The contention last referred to and which we have quoted in full, is predicated upon an assumption not to be found in the pleadings, the evidence or the "Agreed Statement of Facts," viz: That the insurer would have paid, or in practice, does pay, the tax or charge imposed by the statute against the insurance company in respect of premiums by it collected for policies written in the islands.

Under the statute and on the case as made in the "Agreed Statement of Facts," those owners who place their insurance directly in a foreign country without the intervention of an agent in the islands are singled out for taxation, whereas other owners are not required to pay a tax or charge on premiums paid by them.

The position of the Government, as stated by the Attorney-General and quoted in the record (Transcript of Record, pp. 25 and 43), is thus stated: "If you insure your property with insurance companies paying taxes to me, you pay no taxes. If you insure it with companies which do not and cannot be made to pay taxes to me because they are beyond my jurisdiction, you pay the taxes that leak from my coffers on account of your act."

We think it is illogical to say that because the person primarily liable for a tax cannot be reached for the purpose of collecting it, the Government would be justified in taking the tax from another.

We cite the fallacy and the record at this point

because the whole argument of learned counsel for the Respondent, revolves around that erroneous concept of the case.

ARGUMENT.

In support of his position that the statute complained of is valid as within the taxing power of the Government of the Philippine Islands, Respondent cites the case of *Palmetto Insurance Company v. Conn,* 272 U. S. 295, decided by this Court on October 25, 1926.

It is urged that the rule therein declared is decisive of the present case. However, an examination will show that the cases differ so widely on fundamental and vital facts that the decision in one cannot control the other.

In the Palmetto case the insurance premium as to each car became due and payable only when the purchaser took delivery of his car in Ohio (the taxing state). At the same time a certificate of insurance was sent to the purchaser in the taxing state. His voluntary act of purchasing the car and accepting the insurance policy constituted an act of insurance in the taxing state. The consummation of the insurance was accomplished in that state, and of necessity the loss would be payable there. It may be fairly inferred that the only effect of the original contract between the insurance company and the automobile company was the establishment of a lower rate by provisionally promising a large number of contracts by individual purchasers of cars.

As was said by Mr. Justice Holmes, speaking for the Court, it was not the original contract between the insurance company and the Chrysler Corporation that Ohio could prohibit or lay a tax upon, even if the insured property were in Ohio. It was what the purchaser did or permitted to be done in the State of Ohio by the terms of which the insured got a benefit collectible by him in the State of Ohio that made the transaction subject to the Ohio law.

In the instant case, the petitioner, a corporation existing under the Laws of the Kingdom of Spain and with its main office in that country, maintained a branch office in the City of Manila in the Philippine Islands. The policies of insurance were taken out by the Petitioner's head office in Barcelona without the intervention of any agency in the Philippine Islands. The policies were open and running policies of insurance, one with the Guardian Assurance Company of London, England, and the other with Le Comité des Assurances Maritimes de Paris, of Paris, France. Petitioner's head office in Barcelona paid the premiums and, it is agreed, that had any losses covered by the policies occurred, they would have been paid to Petitioner's head office and not in the Philippine Islands. Both of the insurance companies were foreign corporations, the Guardian Assurance Company being licensed to do business in the Philippine Islands and having an agent there. The Paris company, on the other hand, was not licensed to do business in the Philippines and had no agent therein. The insurance now in question, however, was obtained by the Petitioner in Barcelona "without

the use of the services or intervention of any agent, company, corporation or other representative of the two aforesaid insurance companies, residing or doing business in the Philippine Islands." (The above is taken from the Agreed Statement of Facts, at pages 12 to 15, inclusive, of the Transcript of Record.) The only act that was done in the Philippine Islands was the advice by cable from Petitioner's Manila office to the head office in Barcelona of the fact that certain purchases had been made by Petitioner and were warehoused or shipped at Petitioner's order. (Agreed Statement of Facts, Section VI, page 14, Transcript of Record.)

When these notices were sent, however, the insurance contracts previously made and which were open, running policies, had already been closed and were valid and existing policies of insurance. The giving of the notice was a mere collateral matter. It was not the contract itself but an act performed pursuant to an existing contract. The case is therefore directly within the facts and is controlled by the decision of this Court in *Allgeyer, et als. v. Louisiana,* 165 U. S. 578. This case is extensively quoted in Petitioner's brief in support of the petition for Writ of Certiorari and it is therefore only necessary to say that the restraint there sought to be imposed by the State of Louisiana was held to be a violation of the Federal Constitution. We believe the same conclusion must be reached from the admitted facts in the present case. In the cited case it was stipulated that the policy of insurance was written in New York. It is here agreed that the policies of insurance were written respec-

tively in London and in Paris. The collateral matter, namely, the giving of notice within the State of Louisiana relied upon to sustain the validity of the statute there in question, is identical with the giving of notice in Manila in the present case.

Counsel for Respondent attempt to distinguish the Allgeyer case with the statement that the Louisiana Statute prohibited the particular insurance, whereas the Philippine Statute merely requires the insured to pay a tax of one per centum on the premiums paid by its head office in Barcelona on insurance effected wholly without the Philippine Islands.

The argument, in so far as it is based upon the smallness of the percentage charged, merits little consideration. Under the decision of this Court in *St. Louis Cotton Compress Company v. State of Arkansas,* 260 U. S. 346, and other cases cited in Petitioner's brief, the Government of the Philippine Islands was without authority in law to impose the charge or tax at all. On this premise the extent of the tax is of secondary importance. The thing forbidden was the tax or charge itself.

Respondent's argument that the Allgeyer case and the St. Louis Compress case may be distinguished in that they evidence "an invidious discrimination" and "a purpose to discourage insuring companies that do not pay tribute to the state" is equally unsound. The statute here under consideration definitely provides that if the insured obtains insurance in a foreign country such insured shall pay a tax of one per centum on the premiums paid, whereas if the same person had taken insurance from a company

licensed to do business in the Philippine Islands, he would not have been required to pay said tax upon the premiums paid by him. This is a palpable discrimination against a person who desires for one reason or another to place his insurance in a foreign country. The best evidence of the invidious discriminatory character of this charge is found in the above quoted statement of the Attorney-General:

> "If you insure your property with insurance companies paying taxes to me, you pay no taxes. If you insure it with insurance companies which do not and cannot be made to pay taxes to me because they are beyond my jurisdiction, you pay the taxes that leak from my coffers on account of your act."

This declaration of the Attorney General brings the case squarely within the rule announced *In re Thomas Page,* 60 Kansas 842 (47 L. R. A. 68). The Kansas Legislature had passed a law entitled—

> "An Act Providing for the Taxation of Contracts of Insurance Made with Insurance Companies not Authorized to do business in Kansas and Providing for the Enforcement Thereof."

In deciding the case, the Supreme Court of Kansas said:

> "One taxpayer has a policy written in the state by a company with authority, upon which no tax is imposed, while his neighbor has one written by an unlicensed company at Indianapolis, or other place outside of the state, which

> is subject to taxation. Taxes are uniform and equal when imposed upon all property of the same character within the taxing district, and yet here the insured pays a 10 per cent tax upon a policy written outside of the state, while his neighbor pays nothing upon a policy of equal value, and affording the same protection, because it is written within the state. Contracts of insurance written outside of the state cannot be regarded as illegal. Aside from the consideration that they may not be Kansas contracts, and are therefore beyond the reach of the legislature, the act itself contemplates that such contracts may and will be made, and when made are to be treated as property within the state, and become the subject of taxation here. This is an invidious discrimination, purposely made, and is a distinct departure from the constitutional rule of uniformity."

While the Kansas decision is not binding, we concede, upon this Court, it declares the principle that this Court has, we think, universally followed and which was given expression by the decision of this Court in the case of *St. Louis Cotton Compress Co. v. Arkansas,* 260 U. S. 346. That was a case involving the legality of a statute purporting to impose a tax of 5 per cent of the gross premiums paid for insurance upon the Company's property in Arkansas, with foreign insurance companies not licensed to do business in Arkansas. The decision of Justice Holmes is quoted at length on pages 42 and following of Petitioner's Brief. The pith of the decision is that the charge referred to was prohibitive to the extent of the payment required, and the imposition

of the tax manifested a purpose to discourage insuring in companies that did not pay tribute to the State of Arkansas. For that reason the Statute was held unconstitutional.

The only difference between the Arkansas Statute and that involved in the instant case is the difference in the amount or rate of the tax imposed, but, as before stated, the invalidity of the tax does not depend upon the amount, but upon the fact that the tax itself was imposed in violation of the established principles of law.

It is respectfully submitted that the judgment of the lower court should be reversed and relief granted to the Petitioner as prayed for in the Petition for Writ of Certiorari.

W. F. WILLIAMSON,
B. M. AIKINS,
Attorneys for Petitioner.

Dated: San Francisco, California,
October 17th, 1927.

[redacted]

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In the Supreme Court of the United States.

OCTOBER TERM, 1925

No. 1095

COMPANIA GENERAL DE TABACOS DE FILIPINAS,
Petitioner,

vs.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

PRELIMINARY STATEMENT

The statement of the case appearing on pages 13 to 17 inclusive of the petition for certiorari and brief in support thereof sets forth the substance of the pleadings and sets forth in full the agreed statement of facts upon which the case was tried.

The jurisdiction of this court is invoked on three grounds (Petition 6, 10). The third ground, namely that "the lower Court erred in not holding that the cables * * * were collateral and subsequent to the creation of the principal contracts of foreign insurance" (Petition 18), does not furnish a basis for invoking the jurisdiction of this Court and will not be discussed in this brief.

SUMMARY

In opposing the petition for certiorari herein, we submit the following:

The questions involved are of local importance only.

Congress has expressly ratified and adopted the tax law complained of by the petitioner.

The tax complained of is an excise tax and is a tax which Congress has the power to impose.

Petitioner has shown no grounds for invoking the jurisdiction of this Court.

ARGUMENT

The questions involved are of local importance only.

The petition urges that this Court takes jurisdiction on the ground that the questions involved "which are of course, equally important questions of Federal law, under Amendment XIV of the Constitution * * * have never been settled by this Court * * *" (Petition 7). Were the statutes in question in this case enacted by the legislature of a state we might be prepared to concede that the settlement of the question at this time would be desirable. But the statute involved herein is an enactment of a territorial legislature deriving its powers from the Congress of the United States. The powers of that legislature and the limitations upon that power are not the same in principle as the powers and limitations of state legislatures and we believe that no decision by this Court in this case would be determinative of analagous questions arising within the continental limits of the United States. It follows that the decision in this case, if the Court should grant the petition, would be of local application only.

Congress has expressly ratified and adopted the tax law complained of by petitioner.

The law complained of was enacted by the Philippine Legislature December 15, 1914 (Petition, Appendix ii). Inasmuch as the Act of July 1, 1902 (32 Stat. 691, 712) provided "That all laws passed by the government of the Philippine Islands shall be reported to Congress * * *" (Sec. 86) it must be conclusively presumed that Congress was aware of the provisions of the tax law complained of when it enacted the Act of August 29, 1916 (39 Stat. 545). The last-named act is the existing or-

ganic act for the government of the Philippine Islands and contains the following provisions:

> "Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended or repealed by the legislative authority herein provided or by Act of Congress of the United States."

Act of August 29, 1916, supra.

The statute quoted, enacted almost two years subsequent to the enactment of the law complained of by the petitioner, unquestionably ratifies such law.

Conceding, for the sake of argument, that the Philippine Act of December 15, 1914, *supra*, was *ultra vires* as to the Philippine Legislature the power of Congress to ratify illegal enactments of such legislature is definitely settled.

Rafferty v. Smith, Bell & Co., 257 U.S., 226.

In view of the foregoing the ratification contained in section 6 of the Act of August 29, 1916, *supra*, is conclusive of this case if the law complained of be one which the Congress of the United States could itself enact in furtherance of its power to govern the Philippine Islands.

The tax complained of is an excise tax and is a tax which Congress has power to impose.

The tax is an excise upon the performance of an act and not upon the ownership of property. If the transaction taxed by the act is not performed in the manner prescribed in the statute no tax is payable.

Flint v. Stone Tracy Co., 220 U.S. 108, 152.

We believe that this proposition is definitely settled by the opinion of this Court in *United States v. Bennett*, 232 U.S. 299. In the case cited this Court held that it was within the power of Congress to impose an excise tax on the use of a foreign-built yacht owned by a citizen of the United, although such yacht, for a period of more than one year prior to the effective date of the tax law and to the levy of such tax, was used wholly outside of the limits and territorial jurisdiction of the United States. It

will be noted that in the case cited the tax was on the *use* of the property and not on the property. In other words the tax was an excise on the owner's exercise of his right to use a boat of foreign origin. In the case at bar the tax is an excise on the petitioner's exercise of his right to use a contract of foreign origin. We see no difference in principle.

Petitioner has shown no grounds for invoking the jurisdiction of this court.

The cases relied on by petitioner in support of his petition are cases in which this Court passed upon the powers and limitations of state governments. The instant case in its last analysis deals with the powers of Congress. The cases cited and discussed by petitioner have no application to Congressional powers (*United States v. Bennett, supra,* pp. 305, 306), and furnish no ground for invoking the jurisdiction of this Court.

CONCLUSION

We request that the petition be denied with costs.

A. R. STALLINGS,
Attorney for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 42.—October Term, 1927.

Compania General de Tabacos de Filipinas, Petitioner,
vs.
Collector of Internal Revenue.

On Writ of Certiorari to the Supreme Court of the Philippine Islands.

[November 21, 1927.]

Mr. Chief Justice Taft delivered the opinion of the Court.

The Compania General de Tabacos de Filipinas, hereafter to be called the Tobacco Company, brought this suit in the Court of First Instance in Manila to recover from the Philippine Collector of Internal Revenue certain sums paid under protest as internal revenue taxes on insurance premiums which the Tobacco Company during the year 1922, through its head office in Barcelona, Spain, paid to the Guardian Insurance Company of London, England, and to Le Comite des Assurances Maritimes de Paris of Paris, France. These two insurance companies we shall hereafter designate as the London Company and the Paris Company. The case was heard on an agreed statement of facts. The Tobacco Company is a corporation duly organized under the laws of the Kingdom of Spain and licensed to do business in the Philippine Islands, maintaining its chief office in the Islands in the city of Manila. During the year 1922 the Tobacco Company purchased and placed in its warehouses in the Philippines merchandise, and from time to time notified its head office in Barcelona of its value. The Tobacco Company at its head office in Barcelona then insured the merchandise against fire under open and running policies of insurance carried by it with the London Company, and paid premiums of forty-eight hundred and thirty-five and 32/100 pesos. Subsequent to the purchase of the merchandise, the Tobacco Company from time to time shipped it to Europe, and by cable notified its head office in Barcelona of the

value of the shipments. The head office thereupon insured with the Paris Company these shipments for and on behalf of the Tobacco Company against marine risks under open and running policies, premiums on which amounted during the year 1922 to 100,050.44 pesos, and the premiums thus paid were charged to the expense of the Tobacco Company at Manila. The London Company is licensed to do insurance business in the Philippine Islands and has an agent there. The Paris Company is not licensed to do business in the Philippines and has no agent there. Losses, if any, on these policies were to be paid to the Tobacco Company by the London Company in London and by the Paris Company in Paris. The insurance effected was secured without the use of any agent, company, corporation or other representative of the companies doing business in the Philippine Islands. The collector in 1923 assessed and collected from the Tobacco Company a tax of one per cent. upon the premiums paid by it to the London Company of 4832.25 pesos, or 48 32/100 pesos, and on those paid by it to the Paris Company 100,050 44/100 pesos, or 1000 50/100 pesos. These sums were paid under protest in writing. The protests were overruled on the 27th day of July, 1923, and on the 16th of August the plaintiff filed this action for the recovery of the taxes.

The taxes were collected under section 192 of Act No. 2427, as amended by Act No. 2430, of the Statutes of the Philippines. 9 Public Laws 292. That section provides that it shall be unlawful for any person or corporation in the Philippines to procure, receive or forward applications for insurance in, or to issue or to deliver or accept policies of, or for, any company or companies not having been legally authorized to transact business in the Philippine Islands, and that any person or company violating this section shall be guilty of a penal offense and upon conviction shall be punished by a fine of two hundred pesos, or imprisonment for two months, or both in the discretion of the court. The section contains a proviso that insurance may be placed by authority of a certificate of the insurance commissioner to any regularly authorized fire or marine insurance agent of the Islands, subject to revocation at any time, permitting the person named therein to procure policies of insurance on risks located in the Philippine Islands in companies not authorized to transact business in the Philippine Islands. Before the agent named in the certificate shall

procure any insurance in such company, it must be shown by affidavit that the person desiring insurance after diligent effort has been unable to procure in any of the companies authorized to do business in the Philippine Islands the amount of insurance necessary. The agent is to make a yearly report to the Collector of Internal Revenue of all premiums received by the company he represents under the previous authority, and he is to pay to the collector of internal revenue a tax equal to twice the tax imposed by section 79 of Act No. 2339, [*i. e.*, 1% thereof] which tax shall be paid at the same time and be subject to the same penalty for delinquency as the tax imposed by Act No. 2339. 9 Public Laws of Philippine Islands, February 27, 1914, p. 296. It is provided further that the prohibitions of the section shall not prevent an owner of property from applying for and obtaining for himself policies in foreign companies in cases where he does not make use of an agent residing in the Philippine Islands. In such cases it shall be his duty to report to the Insurance Commissioner each case where the insurance has been effected and shall pay a tax of one per centum on premiums paid in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so.

The court of first instance sustained the validity of the tax as to each insurance company. The Supreme Court of the Philippines affirmed the judgment. Two judges of the latter court dissented on the ground that the tax violated the rule of uniformity, and was a denial of the equal protection of the law.

The Philippine Organic Act (39 Stat. 545, 546, c. 416, § 3) by its section 3 imposes upon the legislature of the Philippine Islands the same limitation by which the Fourteenth Amendment restrains the States of the Union, to wit, that no law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person the equal protection of the laws. The question of the validity of the tax on the premiums differs in respect to those paid the two insurance companies.

Coming then to the tax on the premiums paid to the Paris Company the contract of insurance on which the premium was paid was made at Barcelona in Spain, the headquarters of the Tobacco Company between the Tobacco Company and the Paris Company,

and any losses arising thereunder were to be paid in Paris. The Paris Company had no communication whatever with anyone in the Philippine Islands. The collection of this tax involves an exaction upon a company of Spain lawfully doing business in the Philippine Islands effected by reason of a contract made by that company with a company in Paris on merchandise shipped from the Philippine Islands for delivery in Barcelona. It is an imposition upon a contract not made in the Philippines and having no situs there and to be measured by money paid as premium in Paris, with the place of payment of loss, if any, in Paris. We are very clear that the contract and the premiums paid under it are not within the jurisdiction of the government of the Philippine Islands. The taxpayer, however, is resident in the Philippine Islands and within the governmental jurisdiction of those Islands. Its property in the Islands and its agents doing business there are within the reach of the government of the Islands. The Company may be compelled to pay what the government in its quasi sovereignty chooses to exact as a matter of power, unless restrained by law. A legal restriction upon the taxing power of the Philippine government over citizens and residents of the Islands is found in the liberty secured by the Organic Act which embraces the right to make contracts and accumulate property and do business outside of the Philippine Islands and beyond its jurisdiction without prohibition, regulation or governmental exaction.

In *Allgeyer* v. *Louisiana,* 165 U. S. 578, a law of Louisiana provided that any person who should do any act in Louisiana to effect for himself or for another, insurance on property then in that state in any marine insurance company which had not complied in all respect with the laws of the state should be subject to a fine of $1,000 for each offense. Allgeyer was sued for violating the statute, because he had mailed a letter in New Orleans to the Atlantic Mutual Insurance Company of New York advising that company of a shipment of 100 bales of cotton to foreign ports, with bill of lading and an insurance certificate in accordance with the terms of an open marine policy of its issuing. Action was brought to recover for three such violations of the act the sum of $3,000. The answer was that the act was unconstitutional, in that it deprived the defendant of its liberty without due process of law; that the business concerning which the defendants were sought

to be made liable and the contracts made in reference to such business were beyond the jurisdiction of the state because the contract of insurance was made with an insurance company in the State of New York where the premiums were to be paid and where the losses thereunder if any were to be paid. This Court held that citizens of a state had a right to contract outside the state for insurance on their property, a right of which the state legislature could not deprive them, because coming within the meaning of the word "liberty", protected by the Fourteenth Amendment, and that the letter sent to the company, was a proper act, which the state legislature had no right to prevent, this even though the property which was the subject of the insurance had been within the state.

On the authority of the *Allgeyer* case, this Court decided *St. Louis Cotton Compress Company* v. *State of Arkansas,* 260 U. S. 246. That was a suit by the State of Arkansas against the Compress Company, a corporation of Missouri authorized to do business in Arkansas. It was brought to recover 5 per cent. on the gross premiums paid by the Compress Company for insurance upon its property in Arkansas to companies not authorized to do business in that state. A statute of Arkansas in terms imposed a liability for this 5 per cent. as a tax. The answer alleged, and the proof showed, that the policies were contracted for, delivered and paid in St. Louis, Missouri, where the rates were less than those charged by companies authorized to do business in Arkansas. The plaintiff demurred. The Supreme Court of the State justified the imposition as an occupation tax. This Court said:

"The short question is whether this so-called tax is saved because of the name given to it by statute when it has been decided in Allgeyer *v.* Louisiana, 165 U. S. 578, that the imposition of a round sum called a fine, for doing the same thing, called an offense, is invalid under the Fourteenth Amendment. It is argued that there is a distinction because the Louisiana statute prohibits (by implication) what this statute permits. But that distinction, apart from some relatively insignificant collateral consequences, is merely in the amount of the detriment imposed upon doing the act. Here it is 5 per cent upon the premiums—which is three per cent. more than is charged for insuring in authorized companies. Each is a prohibition to the extent of the payment required. The Arkansas tax manifests no less plainly than the Louisiana fine a pur-

pose to discourage insuring in companies that do not pay tribute to the State. The case is stronger than that of Allgeyer in that here no act was done within the State, whereas there a letter constituting a step in the contract was posted within the jurisdiction. It is true that the state may regulate the activities of foreign corporations within the state but it can not regulate or interfere with what they do outside."

The authority of these cases is controlling in disposing of the one before us. The effect of them is that as a state is forbidden to deprive a person of his liberty without due process of law, it may not compel any one within its jurisdiction to pay tribute to it for contracts or money paid to secure the benefit of contracts made and to be performed outside of the state.

But it is said that these two cases were really cases of penalties, although in the *Compress Company* case the law called the imposition an occupation tax. We are unable to see any sound distinction between the imposition of a so-called tax and the imposition of a fine in such a case. A so-called tax is just as much an interference with the liberty of contract as is a penalty by fine, where the subject matter giving rise to the imposition is beyond the jurisdiction of the state. Reference was made in the *Compress* case to the fact that that which was imposed was larger than would have been the tax in the state if all parties had been in the state and the contract had been made there, but the decision itself clearly does not depend for its basis upon discrimination as between a tax and a prohibition or the amount of it. This Court said, in speaking as between the *Allgeyer* case and the *Compress* case:

"In Louisiana the detriment was $1,000. Here it is 5 per cent upon the premiums—which is three per cent more than is charged for insuring in authorized companies. Each is a prohibition to the extent of the payment required. The Arkansas tax manifests no less plainly than the Louisiana fine a purpose to discourage insuring in companies that do not pay tribute to the state."

And that is just what this tax is for. Even though it is only equal to the tax upon normal premiums paid in the Philippine Islands, it is imposed for the purpose of discouraging insurance in companies that do not pay tribute to the state because out of its taxing or penalizing jurisdiction. As the language above quoted from the opinion in the *Compress* case shows, the action of Arkansas was

invalid, because of its attempt "to regulate" the conduct of the Compress Company in respect to a matter not within its local jurisdiction. Taxation is regulation just as prohibition is.

It is sought to take this case out of the *Allgeyer* and the *Compress* cases by reference to *Equitable Life Assurance Society* v. *Pennsylvania*, 238 U. S. 143. The Equitable Life Assurance Society of New York did business in Pennsylvania. The Legislature levied an annual tax of 2 per cent. upon the gross premiums of every character received from business done by it within the state during the preceding year. The company paid large taxes, but appealed to the state courts to relieve it from charges for such of the premiums for five years as had been paid outside the state by residents of Pennsylvania. It was contended by the company that such taxation was of property beyond the jurisdiction of the state, relying on the *Allgeyer* case. This Court held that the tax was a tax for the privilege of doing business in Pennsylvania, and that the fact that the state could not prevent the contracts did not interfere with its right to consider the benefit annually extended to the Assurance Society by Pennsylvania in measuring the value of the privileges so extended; that the tax was a tax upon a privilege actually used, and the only question concerned the mode of measuring the tax. This Court said as to that:

"A certain latitude must be allowed. It is obvious that many incidents of the contract are likely to be attended to in Pennsylvania, such as the payment of dividends when received in cash, sending an adjuster in the state in case of dispute, or making proof of death, citing Connecticut Mutual Life Iinsurance Company *v.* Spratley, 172 U. S. 602, 611; Pennsylvania Lumbermen's Mutual Fire Insurance Company *v.* Meyer, 179 U. S. 407, 415. It is not unnatural to take the policy holders residing in the state as a measure without going into nicer, if not impracticable, details. Taxation has to be determined by general principles, and it seems to us impossible to say that the rule adopted in Pennsylvania goes beyond what the Constitution allows."

The case is not in conflict either with the *Allgeyer* case or with the *Compress* case, decided as late as December, 1922. It turns entirely on the fact that the taxpayer had subjected itself to the jurisdiction of Pennsylvania in doing business there, and it was for the state to say what the condition of its doing that business

in the matter of the payment of taxes should be. This Court said that the Equitable Society was doing business in Pennsylvania when it was annually paying dividends in Pennsylvania or sending an adjuster into the state in case of dispute or making proof of death, and therefore that it was not improper to measure the tax for doing business in the state by the number of individuals whose lives had been insured and with respect to whom and the execution of whose contracts the company was necessarily doing business in the state, even if the premiums paid by some of them had not been paid in the state.

It is true that in considering the question of the measure of the tax, this Court referred to the argument of the Supreme Court of Pennsylvania that the tax might be properly measured by New York contracts because Pennsylvania protected the individuals insured therein during their lives in Pennsylvania. Our Court accepted this as one of several reasons for including such individuals in the measure of the tax because of the incidental business done by the Insurance Company in Pennsylvania which the living of such individuals in that state after the making of the contract brought into its performance and consummation. But such reference can not be made a basis for an argument that such protection as the Government of the Philippine Islands gave to the merchandise while being shipped at Manila furnished any jurisdiction for a tax by that Government on the premiums paid in Barcelona upon the insurance contract. If that were to be admitted, then neither the *Allgeyer* nor the *Compress* case could be sustained for the property in each of those cases was protected by the government seeking to impose the forbidden exactions upon the owner who obtained the insurance out of the state on that property within it. The tax here is not on the property insured. It is a tax on the contract or its proceeds which were not in the Philippines or expected to be there. The *Equitable Society* case does not control or affect the question we are considering. Unless we are to reverse the *Compress* and *Allgeyer* cases, the judgment of the Supreme Court of the Philippines in respect to the tax on the premiums paid to the Paris Company must be held to be erroneous.

Second. We come now to the question of the tax upon the premiums paid to the London Company, which was licensed and presumably was doing business in the Philippine Islands. Does

the fact that while the Tobacco Company and the London Company were within the jurisdiction of the Philippines they made a contract outside of the Philippines for the insurance of merchandise in the Philippines, prevent the imposition upon the assured of a tax of one per cent. upon the money paid by it as a premium to the London Company? We may properly assume that this tax placed upon the assured must ultimately be paid by the insurer, and treating its real incidence as such, the question arises whether making and carrying out the policy does not involve an exercise or use of the right of the London Company to do business in the Philippine Islands under its license, because the policy covers fire risks on property within the Philippine Islands which may require adjustment and the activities of agents in the Philippine Islands with respect to settlement of losses arising thereunder. This we think must be answered affirmatively under *Equitable Life Society*, 238 U. S. 143. The case is a close one, but in deference to the conclusion we reached in the latter case, we affirm the judgment of the court below in respect to the tax upon the premium paid to the London Company.

The judgment of the Supreme Court of the Islands is reversed in part and affirmed in part.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 42.—October Term, 1927.

Mr. Justice Holmes.

This is a suit to recover the amount of a tax alleged to have been illegally imposed. The plaintiff is a Spanish corporation licensed to do business in the Philippine Islands and having an office in Manila. In 1922 from time to time it bought goods and put them into its Philippine warehouses. It notified its head office in Barcelona, Spain, of the value of the goods and that office thereupon insured them under open policies issued by a company of London. From time to time also the Philippine branch shipped the goods abroad for sale and secured insurance upon the shipments in the same manner, the premiums being charged to it in both cases. By § 192 of the Philippine Insurance Act, No. 2427, as amended by Act No. 2430, where owners of property obtain insurance directly with foreign companies the owners are requird to report each case to the Collector of Internal Revenue and to 'pay the tax of one per centum on premium paid, in the manner required by law of insurance companies.' The defendant Collector collected this tax on the above mentioned premiums from the plaintiff against its protest. The plaintiff bases its suit upon the contentions that the statute is contrary to the Act of Congress of August 29, 1916, c. 416, § 3, (the Jones Act); 39 Stat. 545, 546, 547, as depriving it of its property without due process of law, and also as departing from the requirement in the same section that the rules of taxation shall be uniform. The Supreme Court of the Philippines upheld the tax. A writ of certiorari was granted by this Court. 271 U. S. 655.

The plaintiff's reliance is upon *Allgeyer* v. *Louisiana*, 165 U. S. 578, in which it was held that a fine could not be imposed by the State for sending a notice similar to the present to an insurance company out of the State. But it seems to me that the tax was justified and that this case is distinguished from that of *Allgeyer* and from *St. Louis Cotton Compress Co.* v. *Arkansas*, 260 U. S. 346, by the difference between a penalty and a tax. It is true, as indicated in the last cited case, that every exaction of money for an act is a

discouragement to the extent of the payment required, but that which in its immediacy is a discouragement may be part of an encouragement when seen in its organic connection with the whole. Taxes are what we pay for civilized society, including the chance to insure. A penalty on the other hand is intended altogether to prevent the thing punished. It readily may be seen that a State may tax things that under the Constitution as interpreted it can not prevent. The constitutional right asserted in *Allgeyer* v. *Louisiana* to earn one's livelihood by any lawful calling certainly is consistent, as we all know, with the calling being taxed.

Sometimes there may be a difficulty in deciding whether an imposition is a tax or a penalty, but generally the intent to prohibit when it exists is plainly expressed. Sometimes even when it is called a tax the requirement is shown to be a penalty by its excess in amount over the tax in similar cases, as in *St. Louis Cotton Compress Co.* v. *Arkansas.* But in the present instance there is no room for doubt. The charge not only is called a tax but is the same in amount as that imposed where the right to impose it is not denied.

The Government has the insured within its jurisdiction. I can see no ground for denying its right to use its power to tax unless it can be shown that it has conferred no benefit of a kind that would justify the tax, as is held with regard to property outside of a State belonging to one within it. *Frick* v. *Pennsylvania,* 268 U. S. 473, 489. But here an act was done in the Islands that was intended by the plaintiff to be and was an essential step towards the insurance, and, if that is not enough, the Government of the Islands was protecting the property at the very moment in respect of which it levied the tax. Precisely this question was met and disposed of in *Equitable Life Assurance Co.* v. *Pennsylvania,* 238 U. S. 143, 147.

The result of upholding the Government's action is just. When it taxes domestic insurance it reasonably may endeavor not to let the foreign insurance escape. If it does not discriminate against the latter, it naturally does not want to discriminate against its own.

The suggestion that the rule of taxation is not uniform may be disposed of in a few words. The uniformity required is uniform-

ity in substance, not in form. The insurance is taxed uniformly, and although in the case of domestic insurance the tax is laid upon the Company whereas here it is laid upon the insured, it must be presumed that in the former case the Company passes the tax on to the insured as an element in the premium charged.

For these reasons Mr. Justice BRANDEIS and I are of opinion that the judgment of the Supreme Court of the Islands should be affirmed.